

RAILWAY LABOR-MANAGEMENT DISPUTE,
FALL 1982

HEARING
BEFORE THE
COMMITTEE ON
LABOR AND HUMAN RESOURCES
UNITED STATES SENATE
NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

TO REVIEW THE NATURE AND ISSUES OVER WHICH THE LOCOMOTIVE
ENGINEERS ARE STRIKING, TO VERIFY THE EXTENT OF THE WORK
STOPPAGE AND ITS IMPACT ON THE NATIONAL ECONOMY, AND TO
EXAMINE THE ADMINISTRATION'S PROPOSAL TO END THE STRIKE

SEPTEMBER 21, 1982



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CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

TUESDAY, SEPTEMBER 21, 1982

	Page
Kennedy, Hon. Edward M., a U.S. Senator from the State of Massachusetts	4
Hawkins, Hon. Paula, a U.S. Senator from the State of Florida.....	4
Metzenbaum, Hon. Howard M., a U.S. Senator from the State of Ohio	5
Nickles, Hon. Don, a U.S. Senator from the State of Oklahoma.....	6
Randolph, Hon. Jennings, a U.S. Senator from the State of West Virginia	7
East, Hon. John P., a U.S. Senator from the State of North Carolina.....	8
Stafford, Hon. Robert T., a U.S. Senator from the State of Vermont	9
Lewis, Drew, Secretary, Department of Transportation, accompanied by Robert Blanchette, Administrator, Federal Railroad Administration; and John M. Fowler, General Counsel, Department of Transportation.....	10
Harris, Robert O., Chairman, National Mediation Board, accompanied by Roland Watkins, attorney, National Mediation Board	36
Hopkins, Charles I., chairman, National Railway Labor Conference.....	70
Hardin, Fred, chairman, Railway Labor Executives Association, accompanied, by J. R. Snyder, national legislative director; H. E. Nelson, director, re- search and schedules; and R. L. Hart, general counsel	89
Sytma, John F., president, Brotherhood of Locomotive Engineers, accompa- nied by William J. Wanke, first vice president; E. L. McCullouch, vice president and national legislative representative; Virgil F. Davis, BLE di- rector of wages and schedules; Harold A. Ross, general counsel; and Thomas R. Roth, labor relations consultant	100

STATEMENTS

East, Hon. John P., a U.S. Senator from the State of North Carolina.....	8
Hardin, Fred, chairman, Railway Labor Executives Association, accompanied by J. R. Snyder, national legislative director; H. E. Nelson, director, re- search and schedules; and R. L. Hart, general counsel	89
Harris, Robert O., Chairman, National Mediation Board, accompanied by Roland Watkins, attorney, National Mediation Board	36
Prepared statement	40
Hawkins, Hon. Paula, a U.S. Senator from the State of Florida.....	4
Hopkins, Charles I., chairman, National Railway Labor Conference.....	70
Prepared statement	72
Kennedy, Hon. Edward M., a U.S. Senator from the State of Massachusetts	4
Lewis, Drew, Secretary, Department of Transportation, accompanied by Robert Blanchette, Administrator, Federal Railroad Administration; and John M. Fowler, General Counsel, Department of Transportation.....	10
Prepared statement (with attachments)	12
Metzenbaum, Hon. Howard M., a U.S. Senator from the State of Ohio	5
Nickles, Hon. Don, a U.S. Senator from the State of Oklahoma.....	6
Randolph, Hon. Jennings, a U.S. Senator from the State of West Virginia	7
Stafford, Hon. Robert T., a U.S. Senator from the State of Vermont	9
Sytma, John F., president, Brotherhood of Locomotive Engineers, accompa- nied by William J. Wanke, first vice president; E. L. McCullouch, vice president and national legislative representative; Virgil F. Davis, BLE di- rector of wages and schedules; Harold A. Ross, general counsel; and Thomas R. Roth, labor relationships consultant.....	100
Prepared statement	109

IV

ADDITIONAL INFORMATION

Articles, publications, etc.:

Recent Examples of Legislation Imposing the Findings of a Presidential Emergency Board	Page 19
Report to the President, by Emergency Board No. 194, August 19, 1982.....	44
Status Report—Rail Strike Situation, September 19, 1982	139

RAILWAY LABOR-MANAGEMENT DISPUTE, FALL 1982

TUESDAY, SEPTEMBER 21, 1982

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, D.C.

The committee met, pursuant to notice, at 10:45 a.m., in room 2221, Dirksen Senate Office Building, Senator Orrin G. Hatch (chairman of the committee) presiding.

Present: Senators Hatch, Stafford, Quayle, Hawkins, Nickles, Weicker, Denton, East, Kennedy, Randolph, Pell, Eagleton, Riegle, and Metzenbaum.

OPENING STATEMENT OF SENATOR HATCH

The CHAIRMAN. We are going to call the committee to order. We are waiting for the Secretary of Transportation to get here from the House, and I think what we will do is utilize this time to dispose of our opening statements, preferably before he arrives.

This morning the United States finds itself in the midst of a crisis that poses a grave threat to its economic well-being and the welfare of its individual men, women, and children. The threat comes about as a result of a paralyzing strike which the Brotherhood of Locomotive Engineers has lawfully instituted against the Nation's railroads.

It is no understatement that the railroads, and the workingmen and workingwomen of them, have built this country and they have sustained it. It is the railroads that literally have created the channels of commerce, from coast to coast and border to border, by which our Nation has realized unparalleled economic growth over the last century and a half.

Today we face the challenge of rebuilding and revitalizing our national economy, and the railroads are indispensable to that recovery. We can ill afford to see the progress we have made to date imperiled by a protracted disruption of rail service. We can ill afford to see unemployment exacerbated, to see tax revenues lost, to see inflationary pressures refueled.

What I say today echoes the message that thundered home last night to the families of 5,000 workers at General Motors and Amtrak, laid off due to the strike. The message has already reached West Virginia, where 1,400 coal miners went home when Armco could not ship its coal, and Illinois, where another 500 mine employees have no work to do.

In my home State of Utah, the picket lines thrown up by 280 workers have blocked over 3,000 other workers from going to work. On the eve, when American troops once again join the hopeful peace-keeping mission in Lebanon, we face the very real prospect that this railroad disruption will adversely affect our national defense.

The strike involves a walkout by some 26,000 members of the Brotherhood of Locomotive Engineers, and has affected 6 of the Nation's 7 largest railroads. More than 300,000 rail workers have honored the engineers' picket lines. Estimates are that nearly a half million workers will be out of work should this strike continue for only 7 days, and that almost a million Americans will be out of work within 2 weeks.

Economists at the Department of Transportation estimate the strike costs at between \$50 and \$80 million per day, but we are not talking about simple statistics. We are talking about Americans out of work, and an American industry on the ropes. One of the industries most immediately affected was the beleaguered automobile industry. General Motors, in idling 2,350 hourly employees at its St. Louis plant yesterday, indicated other plants could be closed as early as midweek; in other words, tomorrow.

American coal producers are in the middle of an experiment, trying to convince foreign purchasers that delivery of American coal can be cost effective. How this shutdown will affect those efforts to improve our export-import picture is unclear, but it certainly cannot help. American farmers, already hurt by low prices in a bumper crop year, heard from Texas grain handlers yesterday that the strike could delay putting this year's crop into storage, again hurting exports.

Commuters in many large American cities who rely on rail service have been forced to use automobiles to get to work, clogging highways with monumental traffic jams, creating major parking problems, and causing huge amounts of lost worktime. Scientists have not even begun to calculate the resultant increase in air pollution from the increased automobile use, nor has anyone begun to assess the effects upon petroleum usage and supply.

Those are some of the more visible effects. Let me assure you the damage runs deep as well as broad. Let me posit the following examples just from the work of this committee: In the 1½ years that I have been chairman of this committee, we have moved decisively to rescue the railroad retirement system from virtual bankruptcy. The continued success of the reforms we enacted in 1981 is dependent upon keeping railroad employment high and undisrupted.

A significant work stoppage, such as the current one threatens to be, can drastically reduce contributions to the railroad retirement pension fund. The lifeblood of any pension plan is the contributions made by employers and currently employed workers. Curtail those contributions, and the result may well be lower benefits in the future. These contributions clearly are endangered by this work disruption.

Another major achievement of this committee last year was the reform of the Black Lung Benefits Act. The legislation, which I sponsored and guided through the Congress, enabled the black lung trust fund to continue paying benefits to coal miners who are dis-

abled with pneumoconiosis, and to their dependents. A major portion of those benefits is funded by contributions made by the coal industry based on coal production; that production, as I have already indicated, is put at serious risk by this strike.

We do not exaggerate when we say that virtually every American citizen stands to lose, and lose big, if this situation is not resolved with speed.

Furthermore, I want to personally compliment our friends on the Democrat side of this committee who have worked so hard to see that these programs were passed. Without them, they could not have been passed. I particularly compliment my distinguished friend from Massachusetts for the work that he has done in this area.

Understanding the magnitude of the problem, the administration has submitted a proposal for resolving the strike and has asked us to act promptly. The action sought by the President was not developed in a vacuum, but grew out of the negotiations of the interested parties and the recommendations of the emergency board appointed by the President to review the bargaining impasse. The proposal entails a cessation of the strike and orders the parties to return to the bargaining table to resolve a single but really very important issue. In the meantime, railway industry and labor would continue implementing the provisions of contracts satisfactorily negotiated with 12 of the 13 rail unions.

It is of course a fundamental principle of Federal labor law that the Government should not dictate to unwilling parties the substantive terms of their working arrangements. No doubt there are some few who view the administration proposal as contrary to that fundamental principle. Our job today is to examine that issue in the context of the crisis facing the country.

At this hearing today we seek to review the nature of the strike and issues over which the locomotive engineers are striking. We seek to verify the extent of the work stoppage and its impact upon the national economy. We will examine in detail what the administration has proposed to end the strike, seeking to determine whether it is in the best interests of the country. We will ask whether there is precedent for action such as that proposed, and what alternatives may exist. We will ask whether the potential for disruption and damage to our country and the need to avoid that damage outweigh the fundamental principle of not imposing substantive terms of a collective bargaining contract on an unwilling party, and we will seek to determine—if congressional action is necessary—how soon Congress has to act.

This hearing was called on relatively short notice due to those compelling reasons I have laid before you today. I apologize for any inconveniences that short notice may have caused our witnesses, and I wish to thank them for the cooperation they have already shown by appearing before the committee. We do not make such efforts without due cause; the potential problems this strike could pose are grave, and demand our prompt attention.

I want to thank all members of this committee for their willingness to meet today to see if we can effectuate some reasonable conclusion or result in this matter.

Senator Kennedy, I would be happy to turn to you.

**STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR
FROM THE STATE OF MASSACHUSETTS**

Senator KENNEDY. Thank you very much, Mr. Chairman.

I welcome the opportunity to participate in these hearings which are basically the companion hearings to the ones being held in the House of Representatives. I think all of us are extremely mindful of the enormous importance and consequence of a railroad strike of this dimension.

I know the administration has recommendations. This issue, in terms of the relationship between this committee and the railroads, is unique in the willingness of this committee to take action which it has been reluctant to take in other aspects of the collective-bargaining process.

I think in reviewing the history and reviewing the past, there have been a variety of different procedures which the Congress has been willing to take as it has balanced its responsibilities of meeting its national interest as well as the interests of those that are going to be most deeply affected. I just want to give the assurance to the Chair that this is not an issue of partisanship. I think there is a recognition that there is a very important, overriding national interest which is of concern to all of us.

We look forward to the testimony that we are going to hear this morning, and we pledge to you that we are prepared to take expeditious action so that we can resolve this crisis.

The CHAIRMAN. Thank you, Senator Kennedy.
Senator Hawkins?

**STATEMENT OF HON. PAULA HAWKINS, A U.S. SENATOR FROM
THE STATE OF FLORIDA**

Senator HAWKINS. I am as anxious as any member of the committee to resolve this dispute. I think it is ironic that as we sit here today, I was supposed to be in Florida at Tampa this morning, where the Japanese and the French rail committees are presenting proposals to the State of Florida as to which one of their bullet trains would be the best train for Florida to purchase to run from Tampa to Orlando, Orlando to Miami. These are all the latest state of the art, and I have been both to Japan and to France to ride each one of these trains. They only require one human being to operate the entire train.

I think that is a signal to this entire industry. I used to be a regulator. We regulated the trains in Florida, along with telephone and electric companies, gas, whatever is a monopoly. A railroad is a monopoly. They chose regulation rather than competition, and therefore they need this day a strong signal from this committee that the message that the President has delivered is in the public interest.

Every railroad, as well as every industry that is regulated, has a certificate that is called PC and N, public convenience and necessity. That is across the top of their certificate, and in my opinion, when they strike they are no longer serving in the best interests of public convenience and necessity.

Even as I speak, \$80 million has been lost and will be lost each day that a strike continues. The railroad industry puts the cost at \$1 billion a day, only to raise higher with each coming day.

We are not only wasting time and money, we are wasting food. The agricultural industry in Florida called this morning. They have been severely hampered by the strike. My State is at the end of the line. They call it a terminal State. I used to think that meant it was hopeless but it really means that it is at the end of the railroad line, and we depend heavily on the speedy transportation of highly perishable fruits and vegetables. I can well understand the concern of the Midwestern States who rightly fear the strike will delay the storage of this year's grain and corn, but at this moment citrus fruits and vegetables are sitting in Florida waiting to be transported and getting ready to spoil.

Also, Florida's phosphate industry, which everyone needs—it is in the food chain, in the food circle—which feeds crops all over the country with fertilizer, is severely hampered. The railroads transport over 55 million metric tons of rock yearly, and this is fall, and this is planting season.

Therefore, I am as concerned as anyone with any national interest that we be able to resolve this speedily and get about this Nation's business while the railroads resolve the matter of who gets more pay.

The CHAIRMAN. Senator Metzenbaum.

STATEMENT OF HON. HOWARD M. METZENBAUM, A U.S. SENATOR FROM THE STATE OF OHIO

Senator METZENBAUM. Mr. Chairman, I am as concerned as any member of this committee or anybody in this country about bringing to a termination the strike that presently exists, and when I hear the statistics with respect to the amount of damage that will be done if the strike is permitted to continue, it is sort of *deja vu* because I have heard that kind of statistic over a period of many years—when there were steelworkers' strikes, when there were railroad strikes, when there were airline strikes, when there were truckers' strikes, and when there were strikes of any number of kinds of instances.

The question that we have before us is whether or not the Congress of the United States should be called upon to impose a settlement upon the parties in this particular case. Now I have not had the time to make an exhaustive research effort, but it is my understanding that this would be the first instance in which the Congress would be imposing a settlement upon the parties. If that be the case, I think it is a very dangerous precedent. I think it is the kind of precedent that, if we can impose it in this dispute, we can impose it in a dispute when the airline pilots are involved, or the steelworkers, or the restaurant employees, or whoever are involved.

I think that once the Congress gets into the issue of imposing settlements upon the parties—and I am well aware of the fact that there was legislation making the railroad industry totally different than most other industries in this country—I believe that once we get into that arena, then we have truly gone into an area where we

do not belong. If we can impose a settlement that has been recommended by the Railway National Mediation Board, I suppose we can impose other kinds of settlements.

Having said that, that does not actually resolve the issue because the question then is, how do we keep the American economy rolling. The question is, What solution can we suggest to bring about a resolution of this matter and get the railroads operating again?

I have always felt that anything that the parties could do voluntarily would be far better than any action that Government might bring into play. I have inquired of the Brotherhood of Locomotive Engineers as to whether or not they would enter into voluntary arbitration, not imposed arbitration but voluntary arbitration, and their answer was yes. I then inquired of them as to whether or not they would immediately return to work if there were to be voluntary arbitration, and they responded in the affirmative, and I assume that they would confirm that in their presentation this morning.

I have not had an opportunity to inquire of management as to whether they would be willing to enter into voluntary arbitration, conditioned upon the union immediately returning to work, but I for one, Mr. Chairman, would feel much better about a solution that was brought about by the voluntary actions of the parties than by Congress imposing a solution.

It is my understanding that, although Congress has in the past enacted legislation in the area where the Mediation Board has come in with a recommendation, Congress has never actually enacted legislation imposing that solution upon the parties. It is my understanding that Congress has enacted no-strike legislation in connection with that matter. I have difficulty with that concept as well, and I am frank to say it.

However, I believe that the best thing we can do is to listen to the witnesses, and if in some manner this committee could bring about an amicable resolution of this matter and get the parties back to work immediately, I think it would be far better than any congressional action that we might pass here today, tomorrow, or whenever.

The CHAIRMAN. Thank you, Senator Metzenbaum.
Senator Nickles.

STATEMENT OF HON. DON NICKLES, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator NICKLES. Thank you, Senator Hatch.

I want to express my appreciation to you for calling this meeting on such short notice. You are to be complimented for that. Furthermore, I want to congratulate the administration, particularly Secretary Lewis, for their careful and impartial monitoring of the railway dispute and for their willingness to make and take immediate action for the benefit of all Americans.

I agreed with our President's decision to invoke the cooling-off period under the Rail Labor Act. The attempts of labor and management to reach an accord likewise must not go unnoticed, but it is unfortunate such efforts did not reach an accord. Kay McMur-

ray's and Robert Harrison Tynes' service as mediators is also greatly appreciated.

I look forward this morning to hearing testimony from several of the distinguished witnesses on the effects and the extent of the strike, the issues unresolved by the negotiating parties, the recommendations of Presidential Emergency Board No. 194, and on the joint resolution which is before us. I am firmly committed to the principle of collective bargaining as a basis for labor-management relations. I am therefore reluctant to work toward legislative intervention in a private labor dispute.

I believe it must be clearly shown that the circumstances surrounding this labor dispute are so unique and so compelling that the interests of American people and American commerce would warrant such intervention. Although the strike is just 2 days old, its crippling effects on trade, industry, and also commuters, are already evident. Therefore, prompt action by the administration and also by Congress is warranted and indeed necessary.

Again, I want to thank you, Mr. Chairman, and also thank the administration, Secretary Lewis, and all the parties who have given their energies and efforts to help us reach a prompt and speedy accord.

The CHAIRMAN. Senator Randolph, we will go to you.

STATEMENT OF HON. JENNINGS RANDOLPH, A U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator RANDOLPH. Thank you very much, Mr. Chairman.

The matter, someone might say—but that is not sufficient—the problem before us today is serious, and I use the word “serious” with capitalized letters. I know the impact of a nationwide rail strike is more devastating to some regions than to others.

In our State of West Virginia, it is necessary for me to place in the record a very compelling fact at the very beginning of this hearing: 68 percent of West Virginia coal is shipped by rail. That comes from the mine mouth, so there are the affected people, the miners and the operators, as the coal is produced and shipped to the ultimate consumer.

Last year, West Virginia coal producers and miners mined and shipped 44 million tons of coal overseas, and all of this coal moved from West Virginia to the various ports in nearby Baltimore and Virginia for export. Now that shipment of coal came from a network of rail systems in West Virginia—95 percent of our rail network in West Virginia is affected by the freight and passenger service stoppage at the present time.

Even though the impact on coal is devastating, so are the impacts on steel in West Virginia moving by rail, on chemicals in West Virginia moving by rail, on glass in West Virginia moving by rail, and the many other products that we have in our State that move over the rail system.

Certainly today I do not like to speak of it, but the record must indicate it, that we are third in the States with unemployment at the present time, and the situation which we had hoped would improve is not improving. Therefore, the economic impact of this type of strike is very crucial, critical to the State of West Virginia, the

State which is suffering—I repeat—the third highest unemployment in the country. We are now at 13.7 percent, and we do know—and I come very quickly to yesterday, not to a week ago—there were 1,400 coal miners who lost their jobs within the last 24 hours because the rail cars were not available and the shipments could not go forward.

There is no pat solution. I understand that. I have been through these in this committee many times, including 1963 and 1967. However, we do know—I think, all of us—that there must be prompt action. That cannot be something that perhaps can take a few minutes.

Mr. Chairman and members of the committee, I know we are all committed to, let's say, this problem, in the way of placing some other problems before us in secondary degree. I hope whatever the necessary hours are, morning, afternoon or night, that this committee—and I am sure all committee members share my feeling—will help to bring, at least by action of the Congress, that which will be equitable and also one which will be a solution that the American people will know is in the best interests of an economy which is now faltering and falling and must be stabilized.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Randolph.
Senator East?

STATEMENT OF HON. JOHN P. EAST, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Senator EAST. Mr. Chairman, I agree with the administration that there is a compelling need here to act very promptly. As everyone is aware who has followed this, the issue here between labor and management is a very narrow one, one issue involving one union, the engineers.

If this strike is allowed to continue it is going to have a ripple effect throughout the entire state of the American economy and have enormous adverse effects. As frequently is the case here in the real world of Government and politics, you have to balance matters and look at the broader national interest.

I would feel that if the administration and the Congress show their impotence, their inability to resolve this one matter and resolve it quickly, the American people—and rightly so—will be greatly disturbed about our capability and our judgment. As I say, it is one issue. That can be resolved in due course and then you offset that with the whole question of the impact upon the American economy as a whole, and I would suggest that any reasonable mind would want to come down on the side of, "Let's get these people back to work and they can continue the process of resolving this one sole issue."

To hold the American economy hostage on this one sole matter, I think would be, in terms of public policy, indefensible. We need to act promptly, and I commend you for calling this hearing and wanting to move expeditiously. I will happily support you and the administration in your desire to do that.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator East.

Senator Stafford?

**STATEMENT OF HON. ROBERT T. STAFFORD, A U.S. SENATOR
FROM THE STATE OF VERMONT**

Senator STAFFORD. Thank you very much, Mr. Chairman.

I congratulate you on the speed with which you have brought this hearing into being. I have no prepared statement to make at this time, but I do think it is extremely urgent that the strike be speedily and equitably settled. With all of the other troubles which this Nation is involved in now, both foreign and domestic, we can ill afford to have our economy, just beginning to show signs of a recovery, suffering a \$50 to \$80 million per day loss as a result of this strike.

Therefore, I pray with others that we can all together find a speedy, equitable resolution of the problems which brought about the strike.

The CHAIRMAN. Thank you, Senator Stafford.

I understand that Secretary Lewis is on his way over, and will be here about 11:30, so unless anybody has any further statements, I think we will—

Senator METZENBAUM. Mr. Chairman?

The CHAIRMAN. Senator Metzenbaum.

Senator METZENBAUM. Mr. Chairman, at some point I think it would be helpful if the staff would be good enough to prepare for us, orally or in writing, a recitation of what actions Congress has taken in each of the previous railroad strikes where Congress has acted. As I said in my opening statement, it is my understanding that this would be a precedent-making action. Although I believe strongly that voluntary arbitration would be the best solution, I believe that if any action at all is to be taken, we ought not to go to the point of imposing a settlement on the parties.

The CHAIRMAN. I think we can provide you with some material almost instantaneously that will help you to know what has been done in the past. We will get those prepared for all members of the committee.

Senator METZENBAUM. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Since we would like to have Secretary Lewis as our first witness, he will be here within the next 10 or 15 minutes. I think what we will do is recess until he arrives, and then we will proceed with this hearing at that time.

Thank you.

[Recess taken.]

The CHAIRMAN. The committee will come to order.

Let me welcome to the committee at this time Hon. Drew Lewis, Secretary of Transportation. Drew, if you will introduce your associates with you, we will turn the time over to you.

STATEMENT OF DREW LEWIS, SECRETARY, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY ROBERT BLANCHETTE, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION; AND JOHN M. FOWLER, GENERAL COUNSEL, DEPARTMENT OF TRANSPORTATION

Secretary LEWIS. Thank you very much, Mr. Chairman.

First, I would like to apologize to you and your committee, Senator Kennedy and all the others that were here while I was in the House of Representatives. I appreciate your kindness in permitting me to come about 50 minutes late.

With me today is Robert Blanchette, who is a Federal Railroad Administrator, and John Fowler, General Counsel of the Department of Transportation.

With your permission, so we will not take a lot of time here, I would appreciate my written statement being made part of the record. Would that meet with your approval, Mr. Chairman? Can my written statement be part of the record?

The CHAIRMAN. Yes. Without objection, your statement will be placed in the record.

Secretary LEWIS. Thank you very much.

Then in summary I would just like to say that the administration is recommending something here today that we obviously would prefer not to do. We do feel we have an overwhelming obligation to the public in this particular instance. The economic impact of this strike, with 450,000 jobs outside the railroad industry being lost within 2 weeks and almost 1 million within 4 weeks, is more than we feel we can absorb in the present economic climate and with the present high levels of unemployment.

I should point out that the issue here today is a very narrow issue. It is one of the wage differential between engineers and conductors. Under the recommendations of the Emergency Board, management and labor can continue negotiations on this matter but only in a peaceful means until June 30, 1984.

I should point out that this is actually a 30-month contract, 18 months of which have already expired, so we only have 21 months to go until the contract is completed. I am convinced without any question that an impasse exists. They have negotiated on this issue, this very issue, for 18 months. We have had a 60-day cooling off period, an emergency board, National Mediation Board meetings with both sides on this particular issue, and over the weekend Kay McMurray of the Federal Mediation and Conciliation Service tried to help us.

I have talked with all the principals involved—Bob Harris of the National Mediation Board, Kay McMurray of the Federal Mediation and Conciliation Service, John Sytsma, president of the Locomotive Engineers Union, and Charles Hopkins, the chief negotiator for the industry—and in all cases they say an impasse exists that cannot be broken without congressional action.

I should also point out that a precedent has been set in the past, not on this specific issue but on Congress becoming involved in labor disputes in the railroad industry, specifically six times. In some cases compulsory arbitration has been called for; at other

times, the actual recommendations of the Emergency Board have been imposed.

We have considered, we believe, all of the alternatives. One of the very obvious alternatives in this would be compulsory arbitration, which has been turned down within the negotiations themselves. We have talked about the possibility of an extended cooling off period. We think if you do that, essentially what we are going to do is lose the contract with the United Transportation Union because this issue is also an issue within that union.

In simple terms, the wage differential which is being received by the locomotive engineers really is because there will be productivity gains by the UTU due to the reduction in crew size. In other words, the issue is not the differential in wages itself; it is not either the salaries of the locomotive engineers, but specifically the locomotive engineers want to make sure that under these circumstances they continue to make more than people in the United Transportation Union who are not engineers.

Because of these conditions, we feel that congressional action is necessary. Because the issue is so narrow and the great damage we think it is doing the public, we feel that Congress should take prompt action and impose the recommendations of the Emergency Board in this case.

Thank you. I am prepared to answer questions.

The CHAIRMAN. Thank you, Mr. Secretary.

We are happy to have your complete statement made part of the record.

Now you have indicated that the economy would be severely hurt if this strike continues. I presume that includes agriculture, mining, auto production, steel production, and almost every aspect of the economy. Do you agree or disagree with that?

Secretary LEWIS. I agree, and I have a statement here which we will present for the record if that would be helpful to you.

The CHAIRMAN. Without objection, we will put that in the record.

[The prepared statement and additional material of Secretary Lewis follows:]

STATEMENT OF THE HONORABLE DREW LEWIS, SECRETARY OF TRANSPORTATION,
BEFORE THE SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES, CONCERNING
RESOLUTION OF THE CURRENT RAILROAD LABOR-MANAGEMENT DISPUTE,
September 21, 1982.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

ON BEHALF OF PRESIDENT REAGAN AND THE REST OF THE ADMINISTRATION,
WE APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY, AND TO SUGGEST
THAT THE CONGRESS AND THE ADMINISTRATION JOIN IN A BI-PARTISAN MANNER
TO TAKE THE NECESSARY STEPS TO FORESTALL A PROLONGED NATIONWIDE RAILROAD
STRIKE. WE MUST ACT QUICKLY TO AVOID THE SERIOUS INJURY THAT COULD
OCCUR TO THE ECONOMY AND THE NATIONAL DEFENSE IF RAIL SERVICE WERE TO
BE HALTED FOR AN APPRECIABLE PERIOD.

WHEN NEGOTIATIONS BETWEEN THE RAIL CARRIERS AND THE BROTHERHOOD OF LOCOMOTIVE
ENGINEERS (THE B.L.E.) REACHED AN IMPASSE THIS SUMMER, THE PRESIDENT
EXERCISED HIS AUTHORITY UNDER SECTION 10 OF THE RAILWAY LABOR ACT TO
MAINTAIN THE STATUS QUO FOR A 60-DAY "COOLING OFF" PERIOD AND TO CREATE
AN EMERGENCY BOARD TO MAKE RECOMMENDATIONS FOR AN EQUITABLE RESOLUTION
OF THE DISPUTE. ON AUGUST 19, THE BOARD REPORTED RECOMMENDATIONS,
AND THE FINAL 30-DAY PERIOD BEGAN TO RUN.

AS YOU KNOW, WE HAVE NOW EXHAUSTED THE TIME FOR NEGOTIATIONS UNDER THE
RAILWAY LABOR ACT'S EMERGENCY BOARD PROCEDURES, AND THE B.L.E. CHOSE
TO STRIKE THIS PAST SUNDAY MORNING. BOTH BEFORE AND AFTER THAT POINT
WE HAVE MONITORED THE NEGOTIATIONS AND ENSURED THE PRESENCE OF MEDIATORS.
I CAN ASSURE YOU THAT THE PARTIES HAVE WORKED HARD TO REACH AN ACCOMMODATION
BUT REGRETTABLY HAVE NOT SUCCEEDED TO DATE. I HAVE BEEN ADVISED AND
PERSUADED THAT A TRUE IMPASSE EXISTS.

I AM APPEARING BEFORE YOU TODAY BECAUSE THE WELL-BEING OF THIS COUNTRY CANNOT AFFORD A NATIONAL RAIL STRIKE. THE CONTINUATION OF RAIL FREIGHT MOVEMENTS IS CRITICAL, AND A PROTRACTED STRIKE WOULD IMPERIL BOTH THE NATION'S ECONOMY AND DEFENSE.

A SHUTDOWN THREATENS TO HALT THE FLOW OF \$15 BILLION WORTH OF COMMODITIES AND OTHER GOODS PER MONTH THAT ARE SHIPPED BY RAIL. WE ESTIMATE THAT, IN ADDITION TO APPROXIMATELY 400,000 IDLED RAILROAD WORKERS, THERE COULD BE LAYOFFS OF UP TO 500,000 NON-RAILROAD WORKERS AFTER TWO WEEKS OF STRIKE, AND UP TO 950,000 LAYOFFS AFTER FOUR WEEKS. THIS STRIKE ALSO AFFECTS APPROXIMATELY 140,000 RAIL COMMUTERS AND 18,000 AMTRAK RIDERS PER DAY.

THIS ADMINISTRATION IS COMMITTED TO THE PRINCIPLE OF COLLECTIVE BARGAINING AS THE BASIS FOR LABOR-MANAGEMENT RELATIONS, AND WE ARE ONLY SUPPORTING A LEGISLATIVE SOLUTION NOW BECAUSE OF THE COMPELLING CIRCUMSTANCES AND UNIQUE NATURE OF THE DISPUTE. WITH THE EXCEPTION OF THE B.L.E., ALL OF THE MAJOR UNIONS HAVE REACHED AT LEAST TENTATIVE AGREEMENT WITH THE RAILROADS ON NEW NATIONAL CONTRACTS THAT WILL RUN THROUGH JUNE 30, 1984. IN FACT, THE UNITED TRANSPORTATION UNION (UTU) REACHED ITS AGREEMENT BASED ON A SET OF PRESIDENTIAL EMERGENCY BOARD RECOMMENDATIONS SIMILAR IN MOST RESPECTS TO THOSE MADE REGARDING THE B.L.E. DISPUTE.

ONLY A SINGLE ISSUE STILL SEPARATES THE B.L.E. AND THE RAILROADS -- MAINTENANCE OF PAY DIFFERENTIALS. BASICALLY, THE ENGINEERS WANT TO REMAIN THE HIGHEST-PAID CREW MEMBER ON A TRAIN WHEN OTHER CREW MEMBERS RECEIVE PRODUCTIVITY RELATED PAY INCREASES, AND THEY WANT TO BE ABLE

TO STRIKE OVER THE ISSUE IF NECESSARY. THE BOARD RECOMMENDED THAT THEY BE ABLE TO NEGOTIATE, BUT NOT STRIKE ON THE ISSUE THROUGH THIS CONTRACT PERIOD ENDING JUNE 30, 1984. WITH THE EXPIRATION OF THE CONTRACT, THEY CAN OBVIOUSLY TAKE ANY ACTION THEY CONSIDER PRUDENT.

THIS ISSUE CAN AND SHOULD BE RESOLVED WITHOUT THE SIGNIFICANT LOSSES TO EMPLOYEES, THE RAILROADS, AND THE NATION AS A WHOLE THAT WOULD BE CAUSED BY CONTINUATION OF THE STRIKE.

HAVING GIVEN FULL CONSIDERATION TO THE POTENTIAL IMPACT OF THE CURRENT STRIKE ON THE NATION'S ECONOMY AND NATIONAL DEFENSE, HAVING ALLOWED THE PARTIES TO EXHAUST THE STATUTORY PERIOD FOR COLLECTIVE BARGAINING, AND IN VIEW OF THE ISOLATED NATURE OF THE SINGLE OUTSTANDING ISSUE, IT IS THE PRESIDENT'S JUDGEMENT AND RECOMMENDATION THAT THE ISSUE BE RESOLVED IN ACCORDANCE WITH THE INDEPENDENT FINDINGS OF THE EMERGENCY BOARD, FOR A PERIOD CONSISTENT WITH THE OTHER NATIONAL AGREEMENTS NEGOTIATED IN THE RAIL INDUSTRY. THE PROPOSAL WE HAVE FORWARDED TO CONGRESS WOULD EFFECTUATE THE BOARD'S RECOMMENDATION ON THAT ISSUE AND WOULD PLACE IN EFFECT THE OTHER BOARD RECOMMENDATIONS, ON WHICH THE PARTIES HAVE ALREADY TENTATIVELY REACHED AGREEMENT. ALSO, THE PROPOSAL WOULD RESTORE SERVICE IMMEDIATELY BY RETURNING THE PARTIES TO THE NON-STRIKE STATUS OBTAINING PRIOR TO THE STRIKE. THIS STATUS WOULD EXTEND UNTIL THE END OF THE CONTRACT PERIOD, JUNE 30, 1984.

THERE IS AMPLE PRECEDENT FOR CONGRESS TO TAKE SUCH ACTION ON RAIL LABOR MATTERS. ON SEVERAL OCCASIONS SINCE 1963, CONGRESS HAS ENACTED INTO LAW PROVISIONS TO DEAL WITH THE NEGOTIATING STATUS OF THE PARTIES OR

THE SUBSTANTIVE ISSUES INVOLVED. ACTION IS CLEARLY CALLED FOR IN THIS CASE.

IT IS MOST IMPORTANT THAT WE ACT QUICKLY IN THE SENATE AND HOUSE OF REPRESENTATIVES. I WOULD BE PLEASED TO RESPOND TO ANY QUESTIONS YOU OR THE COMMITTEE'S MEMBERS MAY HAVE.

IMPACT OF A NATIONAL RAIL STRIKE

The impacts of a strike will clearly depend on its duration, with costs to the economy rising as shippers consume inventories and begin to shut down operations or switch to alternative, more costly forms of transportation. Our estimates show that if a strike were to last two weeks as many as 500,000 jobs would be in jeopardy. If it lasted four weeks, the number could reach 950,000. Even if the strike were to last only a very brief period, there would still be significant shutdown and start-up costs to industry.

PROJECTED STRIKE IMPACT ON INDUSTRIES
WHICH ARE HEAVILY RAIL DEPENDENT

<u>Industry</u>	<u>Rail Share Tonnage of Shipments</u>	<u>Strike Induced Unemployment After 4 Weeks</u>
Motor Vehicles and Parts	49%	275,000
Paper and Allied Products	43%	160,000
Industrial and Agricultural Chemicals	74%	145,000
Coal Mining	65%	115,000
Other Mining and Manufacturing	30%	255,000

Railroads move 57% of wheat tonnage, 31% of corn shipments and 20% of soybeans. A large harvest is expected in September and October and stocks are being shifted to terminal elevators because on-farm and local elevators are full. A rail strike now will force grain merchandisers to use more expensive trucks to move grain long distances, and will add significantly to storage costs and spoilage. Since many movements to export facilities will therefore be slower and more expensive, our ability to compete for overseas sales will be diminished and export opportunities will be lost.

Passenger and commuter trains operating with crews employed by the freight railroads (except for Conrail) will not run. Approximately 20,000 daily Amtrak passengers, as well as 367,000 daily commuters, more than 75% of them in the Chicago area, will be affected.

The CHAIRMAN. Do the industries served by the railroads have viable alternatives for transporting supplies, finished goods, agricultural commodities, et cetera? How much can the trucking industry take over, the airlines industry, the maritime or shipping industry, or any other forms of transportation?

Secretary LEWIS. A very small percentage of the required service. Actually, in motor vehicles you are talking about 50 percent of the parts. You probably are aware General Motors has already shut down a plant. I have talked to Ford, and they are going to start shutting down next week.

In industrial and agricultural chemicals, it is 74 percent. That cannot be picked up by another industry; 57 percent of our wheat tonnage moves by rail.

The devastating thing about a rail strike, and it differs so much from an industry strike, is that it hits everyone. Obviously, that is why we think the public good would be served by this resolution.

The CHAIRMAN. Well, are these other transportation industries dependent upon the railroads to cooperate? Has the strike had any discernible effect on these other industries? I am talking about the transportation industries.

Secretary LEWIS. Well, at the present time obviously the bus industry is picking up some of the passenger service, the trucking industry is picking up what they can, but the bottom line is, there is just not enough available service to offset what is being lost by this strike, if I understood your question correctly.

The CHAIRMAN. Even the trucking industry, though, is affected by the rail strike because of the piggybacking and so forth.

Secretary LEWIS. The piggyback service is virtually shut down, except within Conrail, and even Conrail will be shut down as it needs feeder railroads at some point.

The CHAIRMAN. You have alluded to the impact of the strike on our national defense. Could you be more specific on how our Nation's national security interests would be affected by this particular strike?

Secretary LEWIS. Well, actually 30 percent of our military surface tonnage moves by rail. I have, again, a list from the Department of Defense which I will submit for the record, rather than take your time, unless you prefer I do it. It involves battle tanks, armor, missile components, guns, ammunition, chemicals, fuel, naval hardware, large machinery. It has a very, very serious impact on national defense.

The CHAIRMAN. Without objection, we will put that statement in the record at this point.

Secretary LEWIS. Yes, sir.

[Material supplied for the record follows:]

Sept. 20 Status Report

Defense Essential Shipments

210 carloads from Ft. Stewart, Ga to Ft. Irwin, Cal; one train due to depart 9/20, one 9/21 and one 9/23

110 carloads from Ft. Irwin, Cal. to Ft. Hood, Tex.; one train on 9/28

51 carloads from Ft. Knox, Ky to Boise, Idaho; one train on 9/23

2 carloads of solid rocket motor segments for Space Shuttle from Corrine, Utah to Kennedy Space Center, Fla on 9/22

98 carloads of jet fuel from Bay Town, Tex., 50 to Beale AFB, Calif, 1 to Moffett Field, Calif, 7 to Palmdale, Calif, 10 to Seabrook, Tex

30 carloads of jet fuel from Asland, Ky to West Palm, Fla.

19 carloads of Trident Missile Material from Nav Pro, Utah to Bangor, Wash./Charleston, S.C. between Sept 18 and Oct 31

1 carload F-18 fuselage from El Segundo, Calif to St. Louis, Mo. between 9/18 and 9/30

9 carloads M-1 tanks from Detroit to Ft. Hood Tex between 9/18 and 9/30

16 carloads M-60 tanks from Detroit to Ft. Hood Tex between 9/18 and 9/30

16 carloads M-1 tanks from Detroit to Bayonne between 9/18 and 9/30

2 carloads of M-1 tank from Lima, Ohio and Ft. Hood, Tex. from 9/18 to 9/30

The CHAIRMAN. How unprecedented, in your opinion, is the President's proposal? Could you indicate for the record the instances in the past where the Congress has stepped in at the request of a President to end a rail strike?

Secretary LEWIS. Of course, it is unprecedented for him and something which he obviously would prefer not to do. However, it has happened in the past, before Congress six times, as I indicated, in the administrations of Presidents Kennedy, Nixon, and one other President, President Johnson, so it has taken place in the past. It has not been on this specific issue but it has, in several cases—two times, I believe—the wage recommendations of the Emergency Board have been imposed and in two or three others arbitration of one type or another was required.

The CHAIRMAN. Do you have a list of those?

Secretary LEWIS. Yes, we do, and we will submit those for the record if you would like to have those.

The CHAIRMAN. Without objection, we will put those in the record as well.

[Material supplied for the record follows:]



Department of Transportation

400 Seventh Street, S.W.
Washington, D.C. 20590

General Counsel

Recent Examples of Legislation
Imposing the Findings of a
Presidential Emergency Board

This responds to your request for recent examples of congressional action imposing the findings of a Presidential Emergency Board on the parties to a rail labor dispute in order to prevent a nationwide rail crisis. In each of the cases described below, Congress acted because the labor dispute threatened the national interest, including the national health and defense, which requires the maintenance of essential transportation services, and because all the procedures of the Railway Labor Act had been exhausted, as are the facts in this case.

In these cases, Congress either directly imposed the recommendations of the Emergency Board or delegated its authority to impose a settlement to a special board created to review the recommendations of the Emergency Board and adopt or modify them.

o In 1963, Congress required that the parties to a railroad labor dispute submit to binding arbitration and established an arbitration board to create a new set of work rules to govern the use of locomotive firemen and the consist of train crews. Pub. L. 88-108, 77 Stat. 132, August 28, 1963. This legislation was upheld as constitutional in Brotherhood of Locomotive Firemen and Engineers v. Chicago, B. & Q. R. Co., 225 F. Supp. 11 (D.D.C. 1964), *aff'd per curiam* 331 F. 2d 1020 (D.C. Cir. 1964), *cert den.* 377 U.S. 918 (1964).

o In 1967, after the parties had failed to reach agreement under an Emergency Board and after Congress had already acted once to postpone the strike deadline and force additional mediation, Congress acted a second time and established a Special Board with the power to make a binding determination of the major wage dispute between the shopcraft unions and rail carriers. The determination was made and bound the parties for two years and had the same effect as if arrived at by agreement of the parties under the Railway Labor Act, thereby precluding them from resorting to a lockout or strike. Pub. L. 90-54, 81 Stat. 122, July 17, 1967.

o In 1970, when the representatives of all the parties reached an agreement on wages and working conditions, but the membership of only three of the four negotiating unions ratified the agreement, Congress enacted the agreement and imposed it upon the parties, as if they had agreed to it under the Railway Labor Act, thereby precluding them from resorting to a lockout or strike. Pub. L. 91-226, 84 Stat. 118, April 9, 1970. This legislation was upheld as constitutional in Louisville & Nashville Railroad Co. v. Bass, 328 F. Supp 732 (W.D.Ky. 1971).

o In 1970, Congress extended the time for collective bargaining under the Railway Labor Act between representatives of the freight handlers and maintenance of way employees and the rail carriers and unilaterally imposed the wages of the employees. In setting the wages, Congress adopted the increases earlier recommended by the Emergency Board in this case. Pub. L. 91-541, 84 Stat. 1407, December 10, 1970.

o In 1971, Congress extended the time for collective bargaining under the Railway Labor Act between the signalman's union and the rail carriers and unilaterally imposed the wages of the employees. In setting the wages, Congress adopted the increases earlier recommended by the Emergency Board. Pub. L. 92-17, 85 Stat. 39, May 18, 1971.

The power of the Congress to use its legislative power to effect compulsory arbitration, or to delegate that power to an administrative board, in a rail labor dispute was settled by the Supreme Court as early as *Wilson v. New*, 243 U.S. 332 (1917), and this case has been continually upheld since.

The CHAIRMAN. I note that in several instances over the past 15 years, that Congress has provided a simple extension or a cooling off period. Now is it fair to characterize the President's proposal as in the nature of a cooling off period extension, and if not, how would it be different?

Secretary LEWIS. Well, here is the problem with a cooling off period—and actually this was an alternative which I think we would have preferred to the recommendation we are making. We are convinced that nothing will come out of the cooling off period except perhaps the unraveling of the UTU contract which already exists. I believe there are about 26,000 people in the Locomotive Engineers and about 150,000 in the United Transportation Union. We believe nothing will be served by the extension because we have negotiated this issue for 18 months. We have gone through two mediation services and an emergency board, and I have personally met with all the principals—and I believe some of them will be here shortly, coming from the House—and the feeling I have, Senator, is that we are just not going to break the impasse. You are going to roll it ahead to another time, have to face the same issue, but in addition to that it will likely stir up a number of other issues that would bring us back in 2 or 3 weeks with another union. Even if you required all the cooling off period for unions—we are here today, as you know, just the Locomotive Engineers—but even if you included BRAC and UTU, the bottom line, I am convinced, is that UTU would rip up their contract at the negotiations. They have taken some lumps on that contract, as have the carriers, on the recommendations of the Emergency Board, and I am convinced in my own mind they are not going to sit there and permit their membership to deteriorate at the expense of what another union may want.

The CHAIRMAN. Well, as I understand it, the UTU has agreed to reductions in force or staff or workers. They have agreed to productivity increases, and all of these, you are afraid, would be lost if the Senate and the House do not act on the President's request.

Secretary LEWIS. In addition to that, they have agreed to modifications on their caboose regulations and several other things which will greatly increase the productivity of the railroad industry.

The CHAIRMAN. I see.

It is a fundamental principle of our Nation's labor laws that the Government should not impose on unwilling parties the substantive terms of their employment relationship. The Government should generally provide the mechanism and the atmosphere, if you will, for the parties to reach their own arrangement or their own agreement, collective bargaining agreement.

There has been some suggestion here today in our opening remarks that you may be imposing the terms and conditions of employment upon the BLE, or Brotherhood of Locomotive Engineers. Could you explain to us whether that principle in any way undercut by what the President is proposing?

Secretary LEWIS. Again, there is a principle and a precedent that has been established in the past where we have had interference. Just the fact that we had a cooling off period, and the fact that we are even discussing the contract here when obviously some congressional action will have to be taken, or we will continue with the strike, is an interference with a collective bargaining process.

We do not like to interfere with collective bargaining but we also have a responsibility, in transportation and in the administration and in Congress, for the public well-being, and we think that offsets this precedent.

Again, the other thing we should point out, the issue here is so narrow in terms of just a wage differential between, really, two competing union groups, that we do not think it justifies shutting down the country. Don't forget, the Locomotive Engineers can continue to negotiate this issue. They just have to do it in a peaceful way. Furthermore, they can strike on the issue as of June 30, 1984. We are really buying labor peace on this issue for 21 months—

The CHAIRMAN. What you are really saying is that you are not trying to impose substantive conditions on the BLE but you are, in essence—if the Congress agrees—imposing a moratorium until 1984, during which time the parties will continue to negotiate and see if they can resolve this impasse or this difficulty that they have.

Secretary LEWIS. That is stated correctly.

The CHAIRMAN. Let me ask you this question: Even assuming that the Brotherhood of Locomotive Engineers is right in its contention that there will be UTU conductors and other employees who, because of high seniority, will make more than the Locomotive Engineers, have you done any estimation as to how many people that might be?

Secretary LEWIS. At the present time that would be highly hypothetical. The problem we have is, under the present situation there would not be any affected, as we understand it, and only with a tremendous improvement in the economy and as these crews are reduced—and I guess we are probably talking 9 months to 1 year until this would even be a factor, and at that point you have less than a year to run in the contract. In other words, I do not have any figures.

The CHAIRMAN. You are saying, probably up to a year there would be no effect, and there would probably be little or none—

Secretary LEWIS. It will be minimal at most.

The CHAIRMAN. Then as the reductions occur under this UTU collective bargaining agreement, which they have agreed to, there may be some high-seniority UTU members who might make more than some of the average BLE members.

Secretary LEWIS. That is conceivable.

The CHAIRMAN. However, even then, that condition would exist for approximately 1 year until the end of this moratorium.

Secretary LEWIS. That is correct.

The CHAIRMAN. I see.

Now under the proposed legislation, as I understand it, the Locomotive Engineers' right to strike is curtailed and they are still required to bargain with rail management over the pay differential issue. Now under what circumstances, if any, would the BLE be able to resort to economic self-help?

Secretary LEWIS. Not during the term of this contract.

The CHAIRMAN. In other words, not until 1984.

Secretary LEWIS. They could not strike until 1984. There would have to be negotiations under peaceful terms.

The CHAIRMAN. In your opinion, does this curtailment of the right to strike tip unfairly the balance of economic power in favor of the railroad management?

Secretary LEWIS. I feel that it does not. As a matter of fact, the real problem here is the difference between the two unions. We are caught between the UTU and the BLE. If the rail management sides with the BLE, the UTU goes out and vice versa. Again, the UTU in my judgment is providing the productivity gains which we so desperately need in rail management. If you could make a judgment from the outside on this issue, my judgment would be that we should not permit the BLE to strike on this very narrow issue. Really, they are not complaining about the wages of the Locomotive Engineers; they are complaining that they will not be right in relation to someone else's wages, where that person accomplishes those wages by productivity gains.

The CHAIRMAN. One other question on that line: Does there still remain adequate economic alternatives—incentives would be a better word—for the industry to accommodate the legitimate bargaining demands of the BLE during this moratorium period, or does it really mean the BLE will in essence be submitting itself to the substantive provisions required by the UTU?

Secretary LEWIS. Well, actually they have agreed to all provisions except this one very narrow issue, so substantially everything that the BLE negotiated with the carriers would be in place under this resolution.

The CHAIRMAN. Therefore, if I understand your position here today, you are saying that this is a narrow issue, it is an issue between two competing unions; it probably would not even affect the BLE for at least a year, and then it would be somewhat minimal; and that the interests of the country at large and the workers throughout this country at large outweigh the interests of this, what you have termed a rather narrow issue. Is that a fair—

Secretary LEWIS. That is a very good summary of our position.

The CHAIRMAN. What you are saying is that if this issue is not resolved in this manner, as recommended by the President of the

United States, who was reluctant to make this recommendation—

Secretary LEWIS. He is not a bit happy with this recommendation.

The CHAIRMAN [continuing]. That if it is not resolved, then it could drastically impact upon the economic well-being of the country, upon the national security interests of this country, and really as a matter of fact upon millions of workers throughout this society.

Secretary LEWIS. That is exactly why we are making this recommendation to you.

The CHAIRMAN. Is there any way, Mr. Secretary, that you or any of the economists or any of the experts in this field, union or management or governmental experts in this field, could come up with some estimate as to how many UTU members would actually be in a category to make more than the average BLE member?

Secretary LEWIS. We will try our best. We would have to work with the UTU. Is Fred Hardin coming here to testify today?

The CHAIRMAN. Yes, sir.

Secretary LEWIS. OK. He could provide those figures for you better than we, although I would be glad to review the figures. In other words, I will have to go to him to have him give me the figures.

The CHAIRMAN. Well, I think that might be helpful because if it is a minimal amount, then it seems to me this would be a de minimis issue. If it is a maximum amount, you can see why the BLE would be upset about it. On the other hand, you know, we probably should have three categories: the highest-paid locomotive engineers, the average pay of the locomotive engineers, and the lower paid.

Secretary LEWIS. The range is roughly \$30,000 to \$50,000, with the average about—

The CHAIRMAN. They average about \$34,000 a year.

Secretary LEWIS. I think the engineers average slightly more than that. The average for the brakemen and the conductors is about \$32,000 and I believe the engineers is—what was our average on the engineers—\$36,000?

Mr. BLANCHETTE. \$37,000 in the engineers and about \$33,000 average for conductors in the UTU.

The CHAIRMAN. The range is somewhere between \$30,000 and \$50,000 for the Brotherhood of Locomotive Engineers.

Secretary LEWIS. That is correct.

The CHAIRMAN. We will go to Senator Randolph at this time.

Senator RANDOLPH. Thank you, Mr. Chairman.

Secretary Lewis, you have stated that compulsory arbitration has been turned down. Has that been turned down by both labor and management, and when were these so-called offers turned down?

Secretary LEWIS. At different points in the negotiation it was turned down by both sides. Early in the negotiations it was turned down by the locomotive engineers, and yesterday when I was trying desperately to put it back together, they agreed to go to compulsory arbitration. At that point, the carriers would not do it, and the reason the carriers would not do it is that if they go to compulsory arbitration and this comes down in some manner other

than the manner recommended by the emergency board, there will be no ratification of the United Transportation Union contract and they go on strike. Therefore, the carriers are sort of caught in a "Catch-22." No matter what they do, it is wrong.

Senator RANDOLPH. A further question: Mr. Secretary, you have indicated that 450,000 individuals could be laid off by the end of this week if the strike is not settled. Now do you have any breakdown for particular industries and for specific States? Before you came today, I mentioned the devastating effect of a strike in a State like West Virginia, in the movement of our coal and our steel and our chemicals and our glass and other products.

Secretary LEWIS. We have those. Particularly I know of your great interest in the coal industry. We feel after 2 weeks you will have 80,000 people unemployed in the coal industry, and within 4 weeks, 115,000. We will submit for the record a breakdown. We do not have it by States but on coal it is relatively easy for us to do. We will have it by State.

Senator RANDOLPH. Well, I thank you very much, Mr. Secretary. I have just one third comment. Perhaps it will elicit a response.

We have had, as has been indicated by our chairman and you and many other members of the committee, we have had these situations in varying degrees with varying time limits in the past, within this committee and then within the Congress. I have been here and participated in all of them.

I think that at the present time we need to have from you and others within the administration the actual impact of the strike, as you see it. What can it or what could it mean to an America already economically distressed? What would happen, let's say, within 2 or 3 weeks to the Nation itself?

Secretary LEWIS. We do have figures on that and we will submit them for the record. Obviously they are projections, and projections are never totally accurate, but the total cost would be somewhere between \$500 million to \$1 billion a day, a minimum of \$15 billion in the first month and about \$80 million a day direct impact on the railroad industry.

The problem with a railroad strike is that it is different than other strikes that just affect one industry. This goes across the board and demolishes them all at the same time, and that is why we are so concerned about this.

Senator RANDOLPH. Mr. Secretary, I appreciate your testimony. As always, you are forthright in your desire to be helpful.

Thank you, Mr. Chairman.

Secretary LEWIS. Thank you, Senator.

The CHAIRMAN. Thank you, Senator.

We will go to Senator Nickles at this time.

Senator NICKLES. Welcome, Mr. Secretary. You missed my opening comments, but I complimented you for the speediness and the manner in which you and the administration have monitored this situation throughout the cooling-off period, and also for your prominence in bringing a positive and very much needed and very timely proposal before Congress.

I think foremost in everyone's mind is the desire to be able to keep the railroads open and not really have one small union be

able to shut down the entire rail transportation system in this country. I think there is a consensus on that.

In looking at your resolution in detail, the first part of it would basically keep the railroads going on the same conditions that they were, last week.

Secretary LEWIS. That is right, prestrike.

Senator NICKLES. This is my question—the report and recommendations would be based on Presidential Emergency Board 194 dated August 19, shall be binding upon all the parties and shall have the same effect as though arrived at by agreement. I wonder why that is necessary.

Secretary LEWIS. Essentially what we are saying, in uncomplicated layman's terms, is "The things you have agreed to are part of this and the one item you have not agreed to, the Emergency Board recommendation on this moratorium on a strike on the wage differential, is being imposed on you." That is a layman's explanation. Now you can tell the Senator why the language is like that.

Mr. FOWLER. Well, essentially the status quo prior to the strike did not have a resolution of the issue in question, to wit, the wage differential. The imposition of the recommendations of the Emergency Board which is contained in paragraph 2 is intended to impose that finding, which is the only one that has not been agreed to, and continue it for the life of the agreed-upon contract period which would run through June 1984 and would supersede the status quo prior to the strike.

Senator NICKLES. Is that still necessary?

Mr. FOWLER. Yes; because putting them back to the prestrike status quo leaves the issue unresolved.

Senator NICKLES. However, you also state in your first paragraph that it—well, that was prestrike, period—it might leave the issue unresolved but also it would be a no-strike situation.

Mr. FOWLER. Yes; that would just be a cooling off period until the end of the contract time, if you just had paragraph 1. It would not resolve the question that is still at issue. If you do that you have the same problem that you have with any cooling-off period, which is to say, the UTU will not send out their contract for ratification nor ratify it. In their contract the same issue has been resolved according to the Board's recommendation.

Senator NICKLES. Did the UTU ratify their contract?

Mr. FOWLER. No; they reached agreement the middle of last week, and it is due to be sent out some time in the next few days. However, they are not sending that out pending resolution of these proceedings, and will not send it out if these proceedings do not resolve the question according to the Board's recommendations. They believe that the Board's recommendations which they have essentially accepted in reaching agreement are much more onerous with regard to their positions than with regard to the BLE's.

Senator NICKLES. My basic reason for asking that question is that I want a minimum amount. I would like for us to keep the railroads going but I did not want to "impose a Government-sanctioned contract" on the railroad industry, in other words, getting us too much into the bargaining context where I question the Government has a role.

Mr. FOWLER. That is why the proviso exists in that paragraph that permits them to implement the terms of the resolution by mutual agreement. Essentially they have agreement, albeit not in signed form, on every other term, and it would be consistent with the findings of the Board.

Senator NICKLES. You also have a provision in the second part of the second paragraph that basically allowed them to continue negotiations, and when and if they should come to an agreement, then that would supersede the resolution.

Mr. FOWLER. Essentially that is correct.

Senator NICKLES. However, it still would basically prohibit the railroad strike; is that correct?

Mr. FOWLER. That is correct.

Senator NICKLES. I can see once you get into this how complicated it can be, particularly when you are talking about dealing with both unions. Again, I would compliment you for the promptness with which you were able to bring this up before Congress. Hopefully we will be able to assist you and get something out in a very short time.

Secretary LEWIS. Thank you very much, Senator.

The CHAIRMAN. Senator Metzenbaum?

Senator METZENBAUM. Mr. Secretary, I share some of the concerns expressed by the Senator from Oklahoma about the matter of imposing a settlement, and that comes back to your own testimony where this is not a new procedure.

Now I am frank to tell you that I have read the summary that has come over from the Department of Transportation, and I have also read a work done on the Railway Labor Act of 1950, written by seven people, none of whom I know, but I assume that it is a rather scholarly work. In both of those I find the following: In 1963 there was binding arbitration ordered; in 1967 they established a special board with the power to make binding determinations. In 1970 that was a totally different situation because there the unions had agreed to a wage settlement and a working conditions settlement; the membership of only three of the four negotiating unions ratified the agreement. It was not a Government position, it was a negotiated position, and in that instance Congress, according to your description of it, enacted the agreement and imposed it upon the parties, but that is obviously far different than what we are talking about in this case.

Secretary LEWIS. Senator, that is very close to the circumstances that exist here. We have BRAC agreed, UTU agreed, all carriers agreed, and the BLE except for one very narrow issue, so this is—

Senator METZENBAUM. However, Mr. Secretary, it is not close at all because the BLE has not agreed to this part of the agreement, and you cannot say that because they have agreed on seven-eighths or six-sevenths or nine-tenths, that that is very similar. In the other case, it was 100 percent agreement. The union had negotiated and come to an agreement with the employer. They took it out for ratification of the membership. Three of the unions ratified; the fourth one did not.

Now what we have here is one union that has not agreed—

Secretary LEWIS. OK, and you had one union then that did not agree and did not ratify, so you really have exactly the same circumstance. The union did not ratify it and Congress imposed a ratification on the union, and that was the entire contract, not just the one narrow issue.

Senator METZENBAUM. Except, if I may submit, as the Senator from Oklahoma pointed out, it is one thing to impose a settlement that the Government determined was the right settlement, and in that instance it was imposing a settlement that the negotiating committee of the union had determined was the right settlement. That is a far different—

Secretary LEWIS. That distinction is correct.

Senator METZENBAUM. In 1970, my understanding is that that matter was actually settled by the parties and not unilaterally imposed. It is my understanding that in that instance—

Secretary LEWIS. That was ultimately what happened but the first action was imposed by Congress. Again, as Senator Nickles pointed out, conceivably this can be settled by these two parties after you impose this. Really what you are doing here is requiring a cooling-off period on this issue that they cannot strike on until June 30, 1984, rather than a cooling-off period for the entire industry—UTU, BLE—on all issues of the contract.

Senator METZENBAUM. Well, Mr. Lewis, I would like to respectfully disagree with your counsel's interpretation and read you what I have on that subject: Public Law 91-541 provided an increase in the rate of pay of affected employees as of January 1, 1970, and by 32 cents per hour effective as of November 1, 1970. Public Law 951 extended the status quo provisions of the final paragraph of section 10 of the Railway Labor Act an additional 80 days. If no settlement had been reached within 65 days, the President was to have submitted a report to Congress regarding the progress of negotiations, together with recommendations for a proposed solution of the dispute.

Settlements were reached with all but one organization during this time period. The dispute with that organization, the UTU, became the subject of litigation and was not resolved until August 1971, but it was resolved by the parties and no settlement was imposed.

Secretary LEWIS. Yes, but while you were doing that you imposed the wages under those contracts by the Congress on the carriers and on the unions, so you imposed that part of the contract and just rolled ahead another portion of it.

Senator METZENBAUM. Well, what they did was, they put the wages into effect while the matter continued to be negotiated, but it was not that which you are suggesting we do in this instance, and that is to impose the final settlement terms, because the parties in that case finally settled the matter themselves, Mr. Lewis.

Secretary LEWIS. I beg to differ with you, sir. Obviously you can have your interpretation and I can have mine, but when you impose wages on two parties in a labor dispute, I think that was a more serious imposition in 1970 than we are recommending today, which is really a cooling off period on one narrow issue which is really a wage differential dispute between two unions. I think that is a greater imposition than we are recommending, sir.

Senator METZENBAUM. Well, one of the things that I have made up my mind about is that I am not going to try to address myself to the merits of the controversy between the parties. That, to me, is something that they have a right to determine for themselves, and so I will not say which is more important. Obviously this union thinks that the clause is more important, and I am not prepared to say they are right or wrong.

The fact is that in that instance they wound up with a voluntary settlement, and in all fairness it is pointed out to me by staff that the imposition of this cooling-off period that you are talking about here would be a period of 2 years, not a period of awaiting further negotiation.

Secretary LEWIS. It would be a period of 21 months. That is correct.

Senator METZENBAUM. Close enough.

Now in 1971 you talk about the fact that Congress unilaterally imposed the extent of the time for collective bargaining on the rail carriers and unilaterally imposed the wages of the employees. The fact is that that is not what occurred. What occurred was that Congress prohibited further strike activity for 4½ months, they awarded the employees a wage increase for the first year as recommended by the Board, and the union and the management then settled the balance of the 3½ years that was in the contract by negotiation, so it is, again, not a totally imposed settlement of a dispute as you have in this instance.

Secretary LEWIS. Well, it is in this sense: When you mandate what you did in this case, specific retroactive pay increases, you have a significant impact on the bargaining ability of either side. In most labor disputes I have been involved with, it is either wages or work rules, and when you legislate half of it you take away a great deal of bargaining power on either side depending on how they react to those particular negotiations.

Mr. Metzenbaum, in no way do I want to imply that we are trying to say this is not a recommendation of congressional interference in the collective bargaining process. It is, and we are not here to try to put any different face on it.

Senator METZENBAUM. I appreciate your candor.

Now, having said that, and all of us having agreed that it would be far preferable if the parties could resolve the dispute themselves, and in view of my understanding that the carriers at an earlier point had indicated their willingness to engage in voluntary arbitration, the union having now indicated that they are prepared to enter into voluntary arbitration, it is my understanding that the only reason for them not to enter into voluntary arbitration at this moment is because the employers are concerned that the other union would not thereafter ratify the contract.

Since it is not at all unlikely that the arbitrator—at least, it is a 50-50 chance that the arbitrator would rule against the union, and maybe even more than that in view of the fact that the Mediation Board has ruled against them—it occurs to me that I think what we ought to do is get this strike resolved first and if we can get the parties to voluntarily arbitrate this matter, if there still is a problem with the other union's ratifying, then provide a strike out

clause—in other words, a clause that they reserve the right to strike if this particular clause goes into effect.

At least we get the railroads working again, operating again, and people are back to work. If the arbitrator rules against the union, the issue is behind us; if the arbitrator rules in favor of the union, he may rule in some half way. He may come in with something less than the total package, that might be acceptable to the other unions involved.

Under those circumstances, I wonder whether an effort should not be made to bring about voluntary arbitration and get the railroads operating by tonight.

Secretary LEWIS. Mr. Metzenbaum, the problem that I have with that is the degree of the possibility of double intervention there with maybe only a 50-50 chance of resolving it. I think what is going to happen, and I think you will hear this from Fred Hardin of the UTO, if we determine that we are going to try to force something on them, they are going to start over again and unravel that contract.

This is a unique situation here. As you pointed out, it is not exactly like any other case in the past nor was any case in the past like any other case in the past. It is a judgment call—I have lived with this thing throughout the 18 months of negotiations, through the 60-day cooling-off period, through the period of the Emergency Board, through the National Mediation Board meeting with these people, and I think Bob Harris of the Mediation Board did a fine job and was very evenhanded. We brought Kay McMurray in from the Federal Mediation and Conciliation Service this past week, again, a fine negotiator and mediator. I think we have mediated this thing almost to death. It has gone through 18 months without a resolution. I do not think you are going to get it resolved, and if you go to any kind of voluntary arbitration you are going to lose the UTU agreement. Again, that is a judgment call but I feel, in talking to all the parties involved—which I have tried to do and tried to do it in a fair way because, frankly, I am not pleased to be here today, as you know—nonetheless that is where I think we are.

Senator METZENBAUM. Let me say that I would no more be in favor of imposing any clause with reference to the UTU contract or any other union's contract. My fundamental concern is about Government imposing a settlement on any union involved in a labor dispute, because I think once you do it in this situation, you do it in many others as well, or at least you set a rather dangerous precedent.

I cannot believe that—and I guess only Fred Hardin can speak to this—I cannot believe that if that union and the other unions had in their contract a strikeout clause—meaning that if by reason of some decision of the arbitrator they felt that they were aggrieved, then they would have a legitimate right to strike—I think that we would at least have the railroads operating at the moment and maybe permanently have this problem behind us, but certainly have it behind us for the time being. It would not be a matter of our imposing something in their contract because giving them a right to strike is certainly not imposing something in the contract that they could not live with.

Secretary LEWIS. Well, going to arbitration is essentially having someone else—I realize, other than the Government—make the decision. Nonetheless, we are really at that point, I feel, with your recommendation not only imposing ourselves in the BLE contract but in addition to that imposing ourselves in the UTU contract.

Again, it is a judgment kind of a call because my original recommendation was to do the kind of thing that you are talking about. I think the resolution we are recommending is a better way to resolve the problem, and it does resolve it and gives us labor peace in times of a very depressed economy, for a period of 21 months in an industry vital to our well-being in terms of industrial, manufacturing, agriculture, and all the other industries that are presently in a slump.

That in no way says that you cannot be right. It is just that I have tried to look at it in a fair way. I have no axe to grind with either of the unions. I just want to see the railroads operating, but I thank you for your view.

The CHAIRMAN. Well, the fact is that if you took that suggestion it might not work, and you would be in a lot bigger mess than you are today, with almost an unresolvable situation.

Secretary LEWIS. That is what I am concerned about.

Senator METZENBAUM. We can find that matter out, I would hope, before the day is completed, Mr. Chairman.

The CHAIRMAN. Yes, I understand. I have to admit the suggestion has appeal. It is just that you have had to make this judgment call based upon 18 months of negotiation and looking at this problem.

Senator QUAYLE?

Senator QUAYLE. Mr. Secretary, in this status report on the background of the dispute which you and Senator Metzenbaum were discussing, it states that agreement was reached between the NRLC and the BLE and negotiations were suspended.

Secretary LEWIS. Are you working off of one of our papers?

Senator QUAYLE. I presume this is one of your papers.

Secretary LEWIS. Go ahead with your question.

Senator QUAYLE. It is a status report, I do not know whose. Maybe it was the staff's. It is giving us background of this 18-month—

Secretary LEWIS. Is that dated September 19?

Senator QUAYLE. Yes; is that yours?

Secretary LEWIS. That is ours.

Senator QUAYLE. The final one says, "No agreement was reached between the NRLC and the BLE, and negotiations were suspended September 15."

Now, then, you have made the recommendation to have Congress impose the findings of the Presidential Emergency Board. What other options were available? What other options could you or did you consider? Voluntary arbitration was obviously one. I wonder if you might walk us through the—

Secretary LEWIS. We considered voluntary arbitration and compulsory arbitration. We considered a 5-day cooling off and then an imposition of the Emergency Board. Then we considered as the most likely alternative—which is what I anticipated as of Friday or Saturday we would be recommending to the President—and that was just a 70-day cooling-off period putting it into a lameduck ses-

sion, or whatever the cooling-off period you would recommend. We did not care particularly what time it would be, but we wanted to make sure we did it at a time when Congress could be in session.

We have reached the conclusion that what appeared to be the most viable option was not viable because we thought it would bring about a strike of the UTU.

Senator QUAYLE. The 70-day cooling-off period?

Secretary LEWIS. The 70-day cooling-off period comes not just from me but from the UTU and the arbitration people I have talked to. You would be unraveling everything that has been put together. The UTU made some major concessions.

The UTU resolved most of their differences and modified some of those recommendations, so we really have a contract in place there. Unfortunately in the BLE we have a contract in place, too, except there is one very narrow open issue. We felt that we were just jeopardizing too much by asking for a 70-day cooling-off period, knowing that the UTU—who presently are not even part of this resolution—at that point would not ratify their agreement.

Senator QUAYLE. Therefore, you are saying that if the recommendation had been a 70-day cooling-off period, that the UTU would not have ratified their contract. There is no way that you could have submitted to the voluntary or compulsory arbitration, during this cooling-off period, this very narrow issue.

Secretary LEWIS. That is correct. Again, don't forget we had two emergency boards operating simultaneously, one working with the UTU and the other with the BLE, so we are not even discussing the other emergency board. That we think is behind us, assuming it is approved, but the same board, the same members of the board, were not able to reach an agreement that somehow the BLE and the carriers could accept.

Senator QUAYLE. In other words, you cannot separate these two issues? I mean, if you had two different boards operating under this, it would seem to me that you might be able to separate the issues.

Secretary LEWIS. Essentially, you cannot separate them——

Senator QUAYLE. These are judgment calls.

Secretary LEWIS. Yes; but these are common issues——

Senator QUAYLE. However, I also feel what has been expressed here this morning, not only by yourself but a number of other Senators, that this ought to be sort of the last resort, coming to the Congress and having these imposed settlements.

Just looking through your statement here from the General Counsel's office, the last congressional action was taken in 1971. That is going back 11 years. We are doing something we have not done for 11 years. If we are going to take this kind of action, I think that we have to be certain that this is an extraordinary circumstance, and that is why I would like to be taken through some of these options that were discarded for obviously good reasons, because I think that you have exhibited good judgment in the past.

I am not here to differ with you but I do, from one perspective, want to say that I am reluctant to impose these congressional sanctions unless it is absolutely necessary. We may be there, but I would like for you to maybe just take us through and tell us again why we have reached this point.

Secretary LEWIS. Obviously, we think we are there or we would not be here today. These are not recommendations that the President likes to make to Congress, nor am I pleased to be here, as I indicated earlier.

However, the reason nobody was here in the last 11 years was that there were no strikes. The last time there was a railroad strike and this had to be resolved was in 1971. In fact, I think the last time they went out was in 1968. Anyway, there has been labor peace throughout that time period and that is why there has not been any confrontation in terms of us bringing something to Congress to hopefully resolve an issue that we cannot resolve on our own.

I think, Senator, the only thing I can say on the alternatives, in the most simple terms, the alternatives are either compelling an outside group to resolve this—in which case you lose the UTU contract—or rolling it ahead for 70 days, at which time you do not get a ratification of the UTU contract. You see, even though there were two separate boards and you try to separate the issues, this was a common issue in both contracts so you sort of have a “catch 22” here where neither one is willing to bet on this issue. It is a matter of trying to make a determination—as you say, a judgment call—on how best to get the railroads back to work.

Believe me, if we did not think this was our last resort we would not make the recommendation. During the weekend, in terms of the cooling-off period, I spent a great deal of time calling people throughout the country—people involved in the labor movement, people involved in mediation, and people involved in the arbitration. I think I have touched bases as well as I can, as have Bob and John, to try to come up with what we think is at the present time the only viable alternative to be certain we have labor peace in the railroad industry until June 30, 1984.

Senator QUAYLE. Why would the UTU contract be set aside if in fact there were compulsory or voluntary arbitration on this issue of the pay differential with Locomotive Engineers and others? Why is that going to be out the window?

Secretary LEWIS. Well, because they have already agreed to the wage differential. I think you also have to be aware of the fact that that UTU is providing productivity gains here which I think are very much needed in the railroad industry. I do not want to make it appear as if I am trying to take the side of the UTU over the BLE. I really have no ax to grind either way, but the UTU has made significant concessions in terms of cabooses and in terms of reducing their crew size to be more competitive. All of these are helpful to the total economy, and obviously to the industry.

We are so close to having that put together and the UTU has agreed on this. However, the UTU does not want the issue to be opened up again and somehow lose their productivity gains. Essentially the BLE wants to get the benefit from their productivity gains and the UTU thinks they should realize that benefit. My judgment, again, is that if we permit this to either continue through a cooling-off period or force compulsory arbitration, you unravel the UTU contract. Frankly, if I were the UTU that would likely be my position.

Senator QUAYLE. Have representatives from the UTU made that explicitly clear with you, that if in fact you determine to use voluntary or compulsory arbitration or you had a cooling-off period for the BLE, that their contract would unravel and not be ratified?

Secretary LEWIS. Yes; they have, but I also could say, having been involved in labor negotiations in a number of companies before I came here——

Senator QUAYLE. They have told you that.

Secretary LEWIS. They have told me that point-blank, but also when you are jockeying for position some things are told that will not be enacted. I think in this case my judgment would be that it will be enacted.

Senator QUAYLE. If we had opted for a 70-day cooling-off period, or a 5-day cooling-off period, would the railroads be running today?

Secretary LEWIS. If you had opted——

Senator QUAYLE. In the alternatives that you were going through, the 7-day cooling off period, would they be running today?

Secretary LEWIS. I don't understand what you mean. If you ask for a 5- or 70-day cooling-off period relating to the BLE, you are going to have to do the same thing with the UTU or they are going to be on strike and we would be back here next week with them. Therefore, if you institute a cooling-off period for BLE, then we get back to ground zero with the UTU, lose the productivity gains, including some of the concessions on cabooses and some of the things that have already been negotiated with them.

That is just as much interference with the collective-bargaining process, in my judgment at least, as just saying, "You cannot strike on this one issue for 21 months." If you go to a cooling-off period, essentially you are still involved. You have broken up one union contract that was already negotiated and not solved the one we are here to try to get solved.

Senator QUAYLE. Do you have any indication how a congressional imposition of this settlement or the effect the recommendation will have with the engineers? Do you have any feeling from them on how they will accept this?

Secretary LEWIS. I really cannot say. Again, you are going to have John Sytsma here this afternoon. Clearly their union is going to be in opposition. Also, as all of us do in labor negotiations, sometimes you get hanging out there pretty far on an issue and cannot get back. I think that is a question you should address to them.

Senator QUAYLE. However, you do not have any feeling on it?

Secretary LEWIS. I have a feeling but, again, I think it would be improper for me to tell you what I think the overall attitude of that union is. Clearly this is something they would like but clearly it is not something that affects anybody in their union unless something happens to somebody else in some other union, which I guess in my judgment is a hard thing for me to get too excited about.

The other side of it is, the engineers clearly want to be the high-paid man on the train because they think their contribution is greater than brakemen or conductors.

Senator QUAYLE. This strike is clearly on the single issue of the pay differential between the locomotive engineers and other members of the train crew. Is that correct?

Secretary LEWIS. That is correct, without any question.

Senator QUAYLE. It is a single-issue dispute——

Secretary LEWIS. A single-issue dispute.

Senator QUAYLE [continuing]. That we are trying to resolve here in the Congress.

Secretary LEWIS. That is correct.

Senator QUAYLE. I just wonder what kind of message that we are going to be sending to future generations, if in fact we are going to be involved in a single-issue dispute?

Secretary LEWIS. Obviously, that is something we had to weigh very carefully and the President did. We reached a conclusion that this was the best alternative under the very difficult circumstances we find ourselves in.

Senator QUAYLE. Do you think that there will be a tendency in future negotiations to say, "Well, let's hold out for a single dispute, and we'll let the Congress settle it, and we may be able to do better with the Congress than we can with the negotiators?"

Secretary LEWIS. I really do not think so. Again, this is one of those very difficult kind of issues that has been, as I say, lying around 18 months in negotiation and still not resolved.

Senator QUAYLE. Therefore, you do not see any precedent that we are establishing to say, "Well, fellows, hold out for a better deal. We'll go ahead and be able to strike and we'll go to the Congress."

Secretary LEWIS. I feel no more so than you have six times in the past. The only difference is that in this particular, very narrow issue, you are saying that the BLE does not have the right to strike, but again, you are limiting the time period over which they do not have that right.

Senator QUAYLE. I hope you are right.

Secretary LEWIS. Thank you. I do, too.

The CHAIRMAN. Thank you.

Senator Kennedy?

Senator KENNEDY. Thank you very much, Mr. Lewis. Your responses have been helpful, certainly to me, in better understanding the issue.

I want to make it very clear that I believe that this issue has to be resolved and it has to be resolved expeditiously. As a country and as a nation we cannot have a continuation of the failure of the rail transportation system in this country from functioning and working. I think it is going to call for early action—really we are talking about hours—and of action by the Congress.

Although I obviously have many of the concerns which have been expressed by others here today, I want to make my position very clear. I think we have to take action and effective action to see that the rail transportation system of this country is going to move ahead.

I know that you have had long and detailed conversations and have been very much involved in the negotiations. If we were able, as a result of the course of these hearings today, to get at least a response from some of the other witnesses that will testify that represent the other interests, that the UTU contract would move toward a ratification and that the BLE would go back to work and that this issue could be put in the form of some compulsory arbitration in which they would agree, at least before this committee,

and make a statement that they would abide by that arbitration and go into a no-strike commitment, would you have any trouble with that formulation?

Secretary LEWIS. Senator, the problem with that—and we discussed that as an alternative—if that takes place, the UTU will not ratify their contract.

Senator KENNEDY. If they would, do you have any objection to that way of—

Secretary LEWIS. If the UTU ratifies their contract, ratifies and is satisfied with this being submitted to compulsory arbitration—

Senator KENNEDY. Compulsory arbitration.

Secretary LEWIS [continuing]. And if we can get the carriers and the BLE to agree to that, I would have no objection.

Senator KENNEDY. Would that be a preferable way, if it were possible, from the rather extraordinary requests that are being made here, if we could get an understanding that they would move right back to work forthwith?

Secretary LEWIS. If the three parties involved would agree to compulsory arbitration, that would be much preferred. If you are able to accomplish that—

Senator KENNEDY. Well, that is saying a good deal, obviously, but over the course of these hearings we will at least have an opportunity to inquire of the different members.

Secretary LEWIS. We would much prefer not to interfere.

Senator KENNEDY. I have no other questions.

The CHAIRMAN. We want to thank you, Mr. Secretary.

We will put into the record the top 10 States impacted by a national rail strike—Michigan, West Virginia, Ohio, Kentucky, Indiana, Pennsylvania, Illinois, Wisconsin, New Jersey, Virginia—from top to bottom, ranging from 5-percent increase of unemployment by the fourth week down to 1 percent, without objection.

We want to thank you, Mr. Secretary, for coming. We know that this has been a very difficult issue for you. We think you are trying to handle it in the very best and professional manner possible, and we want to commend you for the excellent testimony you have given here today. I think you have been very enlightening and you have been prepared, and you have helped the committee to a great degree.

Secretary LEWIS. Thank you very much. Again, my apologies and my appreciation for your courtesy in permitting me to come late.

The CHAIRMAN. Thank you so much.

We will now call on Robert O. Harris, Chairman of the National Mediation Board. We will also call Charles Hopkins, Chairman of the National Railway Labor Conference, if he is also in the room.

Mr. Harris, we are happy to welcome you to the committee. We will turn the time over to you.

Senator KENNEDY. Mr. Chairman, I just point out that Mr. Harris is no stranger to this committee. He spent many years as a counsel to the committee on many important pieces of legislation which are on the books and bear the imprint of Mr. Harris. We are glad to welcome you back.

STATEMENT OF ROBERT O. HARRIS, CHAIRMAN, NATIONAL MEDIATION BOARD, ACCOMPANIED BY ROLAND WATKINS, ATTORNEY, NATIONAL MEDIATION BOARD

Mr. HARRIS. Thank you both.

It is with certain nostalgia that I come here, and a certain embarrassment, having worked for you as a staff member of the committee when most of the previous legislation in this area, unfortunately, was passed.

I would like to submit my entire statement, short as it is, and also the report of the Emergency Board 194 for the record.

The CHAIRMAN. Without objection, the entire statement will be placed in the record along with any exhibits.

Mr. HARRIS. If I could, I would just like to summarize the negotiation process. As you are aware, under the Railway Labor Act the parties serve notice as to how they wish to change their contract. They then have meetings. If they are unable to reach an agreement, they are required by law to ask the Mediation Board for assistance. We then come in and help to mediate their differences.

If we eventually find that we are unable to resolve their difference under the law, we allow them the choice of arbitrating their differences or not accepting arbitration. If they do not accept arbitration they are free to resort to self-help 30 days after that refusal.

If a strike were to result which would impede commerce, the President is empowered to appoint an Emergency Board, which he did in this case. The Emergency Board heard the dispute between the Locomotive Engineers and the National Railway Labor Conference. The same board also heard the dispute between the UTU and the National Railway Labor Conference, and issued its report on consecutive days.

Thirty days thereafter, the parties either accept the Emergency Board report, modify it, or are free to make any changes that they wish. In the case of the UTU they took the Emergency Board report and sat down with the carriers, modified certain provisions of the Emergency Board report, fleshed out certain others, and reached a tentative agreement. That agreement is subject to a two-stage ratification that I am sure Mr. Hardin will describe to you.

In the case of the BLE, the Emergency Board report was read, there were some discussions between the parties privately, and then on September 13 we called them back together. The parties met on September 13, 14, and 15, and then the administration asked Kay McMurray, who formerly was a member of the National Mediation Board and is now Director of FMCS, to join me in attempting to mediate the dispute. He joined the mediation efforts and we mediated on the 17th, 18th, and 19th of this month. The mediation actually went through all of the 19th and up until 7 o'clock in the morning of the 20th. The strike actually began at midnight on the 19th but we kept working.

We then made an additional attempt later on the 20th to get the parties to reach an agreement and were unsuccessful. As a result of that meeting yesterday, I think it is fair to say that at this moment the parties are not able to resolve their single difference and are at a true impasse.

While there are a number of issues which were before the Emergency Board, all of those issues have been tentatively resolved and I believe that it would be best not to get into a detailed discussion of those other issues that were resolved. The sticking point has involved what has been variously described as the moratorium, crew consist, or maintenance of differential issue. Those characterizations are based upon who is doing the talking. The carriers call it a moratorium issue or a crew consist issue; the BLE calls it the maintenance of differential issue.

I would like to summarize it very quickly, although I know Secretary Lewis has done some of this summarization. I will try it once again in slightly different words.

Whenever the UTU, which represents conductors and brakemen, negotiates a crew consist issue with a carrier, it agrees to reduce the size of the train crew basically from three members—this is excluding the engineer—to two members, in return for additional compensation for the remaining two members. The amount that is gained from this increase in productivity is put into a fund and a percentage of that is given at the end of the year to the trainmen and conductors who have worked that year.

These productivity payments have reduced what has been the engineers' historic pay differential and have resulted in a few conductors making as much as some engineers. They would be conductors on certain specialized, long-distance trains as opposed to engineers in yard work.

The CHAIRMAN. Can you give us some estimation of what number of people would be in that category?

Mr. HARRIS. I cannot. I think there are very few, several hundred but no more than that.

The CHAIRMAN. In other words, of the 150,000 UTU members, there might be several hundred who would make as much as the BLE locomotive engineers?

Mr. HARRIS. That is correct, Mr. CHAIRMAN.

The CHAIRMAN. There are 26,000 locomotive engineers in the country and about 150,000 UTU members?

Mr. HARRIS. That is correct. Well, there are 26,000 BLE members that are under this negotiation. There are about 35,000 total.

The CHAIRMAN. Right.

Mr. HARRIS. The average wage of the engineer is about \$36,000; the average wage of the conductor is about \$32,000 at this point.

The CHAIRMAN. Do you agree—and I do not mean to interrupt your presentation but it is an important issue—do you agree with Secretary Lewis that probably none of them would make more than the engineers, none of the UTU members would make more than the average engineer makes for about a year?

Mr. HARRIS. Oh, I think that is correct.

The CHAIRMAN. In other words, you are talking about maybe 200 UTU members out of 150,000.

Mr. HARRIS. Yes. I would—

The CHAIRMAN. Who might make slightly more than some average engineer makes—

Mr. HARRIS. I would not even say the average engineer; more than the lower paid engineer.

The CHAIRMAN. In other words, they may not even make more than the average engineer.

Mr. HARRIS. That is correct. The average wage of an engineer is \$36,000; the average wage of a conductor is \$32,000. That is slightly over 10 percent but historically it has been as high as 15 or 20 percent.

The CHAIRMAN. Just so we understand that point, of 150,000 UTU employees versus 26,000 BLE employees, the BLE employees feel that they should be compensated more than the UTU because they are the engineers running the train.

Mr. HARRIS. That is correct.

The CHAIRMAN. They have, they feel, a higher responsibility and perhaps a more demanding job, at least that would be their argument.

Of those 150,000 UTU members, none would make more than probably the lowest BLE or locomotive engineer during the next year.

Mr. HARRIS. That is correct.

The CHAIRMAN. However, after the next year there may be as many as 200 who might make slightly more than the lowest locomotive engineer.

Mr. HARRIS. I do not think that 200 is a firm figure, but there would be a small number that would make more, depending on how the crew consist agreements were implemented.

The CHAIRMAN. Well, let's say less than 500 you would feel would be pretty accurate.

Mr. HARRIS. Yes.

The CHAIRMAN. Therefore, out of 150,000 members, maybe 500 who, I take it, would have very high seniority.

Mr. HARRIS. Absolutely.

The CHAIRMAN. Therefore, they would only make a little bit more than some of the Brotherhood of Locomotive Engineers with low seniority.

Mr. HARRIS. With very low seniority.

The CHAIRMAN. Very low seniority?

Mr. HARRIS. Yes, sir, on yard crews.

The CHAIRMAN. That is a very important point as far as I am concerned.

Mr. HARRIS. The BLE has attempted to counter the proposals to pay these UTU payments, to get an additional payment where the UTU negotiates a crew consist agreement. At the present time, the local negotiations by the BLE could result in local strikes on a particular railroad. In fact, there have been agreements reached by the BLE with individual carriers on four railroads. Unfortunately, what Secretary Lewis was referring to, when the BLE has reached an agreement with the carrier on an additional amount to be paid the engineers, the UTU has immediately filed a counternotice asking that their wages be adjusted upward because of the BLE's increase in wages.

The CHAIRMAN. I hate to interrupt you again, but it is an important point. Are you saying, then, that it would be basically impossible to get the UTU to agree to make their contract binding, regardless of what happens to the BLE, if the BLE went to arbitration?

Mr. HARRIS. You will have to ask Mr. Hardin that, but my opinion at this point from having talked to the parties is basically, "Yes." By the way, the UTU reached an agreement that they would not strike on this issue, in their contract, and the reason that Secretary Lewis referred to the possibility of a holdup in the ratification of the UTU is, they do not want to be in a position of agreeing not to strike if the BLE wins the right to strike on the issue on a particular railroad.

The CHAIRMAN. What you seem to be saying is that you agree with the Secretary that this is a dispute between two of the wide variety of railway unions over what really is an important issue to the BLE, but really one minor issue in the overall set of negotiations?

Mr. HARRIS. I would say that is correct. Yes, sir. The Emergency Board made a whole set of recommendations but it recommended that the BLE should not be allowed to strike during the period of this contract term. Now I should point out that the question of the differential in pay between the UTU and the BLE is also part of an agreed-upon study commission which has been tentatively agreed to by the UTU, the NLRC, and the BLE, to study the entire problem of the way operating employees of railroads are paid, so that while they would not be allowed to strike if the Emergency Board's recommendations were put into effect, the problem will be discussed during the next 18 months, regardless of the outcome of this particular dispute.

I think that concludes my statement.

[The prepared statement and additional material of Mr. Harris follows:]

STATEMENT OF ROBERT O. HARRIS
CHAIRMAN, NATIONAL MEDIATION BOARD
BEFORE THE
SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES
SEPTEMBER 21, 1982

Good morning Mr. Chairman. I am Robert O. Harris, Chairman of the National Mediation Board, and principal mediator in the dispute between the Brotherhood of Locomotive Engineers, representing 26,000 locomotive engineers, and the National Railway Labor Conference, representing most of the nation's railroads. I am here this morning to present a chronology of the negotiations between the parties, and a discussion of the issues which remain in dispute at the present time. In addition, I will discuss the tentative settlement between the NRLC and the United Transportation Union as it relates to the issues here. My sole purpose is to present background information for the committee, and I will leave discussion of policy questions to representatives of the administration.

CHRONOLOGY

The Brotherhood of Locomotive Engineers served its Section 6 Notices on January 26 and February 2, 1981. The National Railway Labor Conference served its Section 6 Notices on February 5, 1981. Negotiations did not begin for several months because of the need to settle railroad retirement issues. Negotiations began in the latter part of 1981, and mediation was invoked by NRLC on November 25, 1981.

- 2 -

The NMB began mediation under the auspices of Chairman Robert O. Harris and Staff Mediation Director E. B. Meredith on December 7, 1981. Mediation sessions were also held on January 12, 13, 26 and 27, 1982, February 22, 23 and 24, 1982, April 7 and 8, 1982, and May 20, 26 and 27, 1982.

On June 1, 1982, the NMB proffered arbitration in accordance with Section 5, First. NRLC accepted the proffer and BLE rejected it. On June 10, 1982, the NMB advised the parties that it was terminating its services.

On July 8, 1982, President Reagan issued Executive Order 12370, effective July 10, 1982, creating Emergency Board No. 194 to investigate the dispute and issue its recommendations for a settlement. By stipulation of the parties, the time for reporting to the President was extended to August 19, 1982.

The Emergency Board conducted six days of formal hearings and four days of informal discussions with the parties, and submitted its report and recommendations to the President on August 19, 1982. Under the Railway Labor Act, the union would be free to strike at 12:01 a.m. on September 19, 1982, if no agreement was reached by then.

The BLE and NRLC resumed direct negotiations on August 25 and 26, 1982.

The NMB resumed its mediatory efforts on September 13, 14 and 15, 1982. The Director of the Federal Mediation and Conciliation Service joined this effort on September 17, 18 and 19, 1982. However, no agreement was reached, and a strike began at 12:01 a.m. on Sunday, September 19, 1982.

The parties met with the mediators on September 20, 1982, in a last attempt to find a basis for settlement of the strike. As a result of that meeting yesterday, it is fair to say that at this moment the parties are unable to resolve their single difference and are at a true impasse.

While there were a number of other issues which were before the Emergency Board, all of those issues have been tentatively resolved and I believe that it would be best for your purposes not to get into a detailed discussion of them.

The sticking point has involved what has been variously described as the moratorium, crew consist or maintenance of differential issue. It may be summarized as follows, although I hope you will discuss this with each of the parties when they appear before you later.

Whenever the United Transportation Union, representing conductors and brakemen, negotiates a crew consist agreement with a carrier, it agrees to reduce the size of the train crew in return for additional compensation for the remaining crew members. These productivity payments have reduced the engineers' pay differential, and have resulted in some trainmen earning more than the engineers they work with.

BLE has attempted to counter this with proposals to pay an engineer an additional allowance where UTU negotiates its crew consist agreement. At present, these local negotiations by BLE may result in a strike under the procedures of the Railway Labor Act.

NRLC sought a total moratorium on the issue of engineer differentials to avoid "leapfrogging" of engineer and trainmen allowances, since UTU will seek a new differential if BLE gets one.

The Emergency Board recommended that the BLE be permitted to continue to negotiate for these payments during the current moratorium, but that it not be permitted to strike. The NRLC agreement with the UTU contains a similar provision permitting negotiations but prohibiting strikes, when the UTU seeks to negotiate an adjustment based on an agreement between the BLE and a carrier.

Report
to
THE PRESIDENT
by
EMERGENCY BOARD NO. 194

Appointed by Executive Order 12370, dated July 8, 1982,
pursuant to Section 10 of the Railway Labor Act, as amended

To investigate the dispute between the Brotherhood of Locomotive Engineers and certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference.

(National Mediation Board Case No. A-10872)

Washington, D. C.
August 19, 1982

LETTER OF TRANSMITTAL

Washington, D. C.
August 19, 1982

The President
The White House
Washington, D. C.

Dear Mr. President,

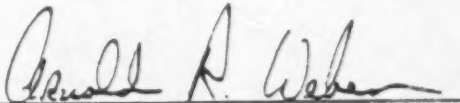
On July 8, 1982, pursuant to Section 10 of the Railway Labor Act, as amended, and by Executive Order 12370, you created an Emergency Board to investigate the dispute between the Brotherhood of Locomotive Engineers and certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference.

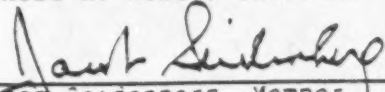
Following its investigation of the issues in dispute, including both formal hearings on the record and informal meetings with the parties, the Board has prepared its Report and Recommendations for settlement of the dispute.

The Board now has the honor to submit its Report to you, in accordance with the provisions of the Railway Labor Act, and its Recommendations as to an appropriate resolution of the dispute by the parties.

The Board acknowledges the assistance of David M. Conen and Roland Watkins of the National Mediation Board's staff, who rendered valuable aid to the Board during the proceedings and in preparation of this Report.

Respectfully,


Arnold R. Weber, Chairman


Jacob Seldenberg, Member

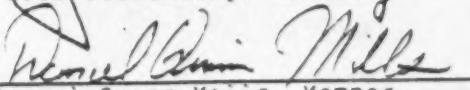

Daniel Quinn Mills, Member

Table of Contents

I. Creation of the Emergency Board	1
II. Parties to the Dispute	2
A. The Organization	2
B. The Carriers	2
III. Activities of the Emergency Board	3
IV. History of the Dispute	4
V. Report and Recommendations	5
A. Wages and Cost-of-Living Allowances	5
B. Holddowns	8
C. The Study Commission	10
D. Expenses Away From Home	15
E. Moratorium	16
F. Withdrawal of Notices	18
Appendix: Executive Order 12370	19

I. CREATION OF THE EMERGENCY BOARD

Emergency Board No. 194 was created by President Reagan on July 10, 1982, by Executive Order No. 12370, signed on July 8, 1982, pursuant to Section 10 of the Railway Labor Act, as amended, 45 U.S.C. §160. The President had been notified by the National Mediation Board (NMB) that, in the judgment of the Board, a threatened strike by the Brotherhood of Locomotive Engineers (BLE) against certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference (NRLC) threatened substantially to interrupt interstate commerce to a degree such as to deprive the country of essential transportation service.

The President appointed Dr. Arnold R. Weber, President of the University of Colorado, as Chairman of the Board. Dr. Jacob Seidenberg, an arbitrator with substantial experience in the railroad industry; and Dr. Daniel Quinn Mills, Professor at the Harvard University Graduate School of Business Administration, were appointed as members of the Board.

II. PARTIES TO THE DISPUTE

A. THE ORGANIZATION

The Brotherhood of Locomotive Engineers (BLE) represents approximately 35,000 locomotive engineers on railroads in the United States. Some 26,000 engineers are employed by the carriers who are parties to this dispute.

B. THE CARRIERS

The National Carriers' Conference Committee of the National Railway Labor Conference (NRLC) represents the major railroads in collective bargaining with the various labor organizations which represent rail industry employees. A complete list of the carriers involved in this dispute is attached to the Executive Order creating the Emergency Board, which is appended to this Report.

The railroads involved in this dispute operate approximately ninety percent of rail track miles in the United States, and include every major railroad except ConRail. Only Rhode Island, among the contiguous states, is not served directly by these railroads.

Freight hauling by American railroads now exceeds 900 billion revenue ton miles on Class I carriers, up substantially in recent years. Rail transportation accounts for almost 38 percent of ton miles, exceeding by a significant margin trucking, water, pipeline, or air transport. Although the railroads have increased dramatically their business, competition from other modes of transportation has reduced the overall share of the market going to the railroads. While the total tonnage shipped has increased, the size of the nation's rail system has declined. Over the last decade, trackage has declined by 30,000 miles, and there has been a loss of over 100,000 railroad jobs.

III. ACTIVITIES OF THE EMERGENCY BOARD

The Board held an organizational meeting in Chicago, Illinois, on July 15, 1982, at which the members met with Federal mediators and received a thorough briefing on the history of the dispute. By stipulation between the BLE and the NRLC, the Emergency Board requested that the NMB request an extension of the time for submission of its report to the President, from August 9, 1982, to August 19, 1982. On July 26, 1982, President Reagan approved the extension of time.

On July 20-21, 1982, the Board conducted on-the-record ex parte hearings with the BLE. Similar hearings were held with the NRLC on July 26-27, 1982, in Reston, Virginia. The hearings focused on a formal presentation of the parties' positions and their justifications for them, and resulted in 958 pages of transcripts and forty-nine exhibits.

Transcripts and exhibits of the formal ex parte hearings were exchanged in Washington, D.C., on July 28, 1982, and the parties were given time to review them and to prepare responses for subsequent on-the-record rebuttal sessions with the Board.

On August 4, 1982, the Board commenced such sessions with the NRLC, and on August 5, 1982, the BLE had its opportunity for rebuttal. On August 10, 1982, informal discussions between the parties were held in Chicago, Illinois. These efforts continued through August 12, 1982. They were recessed in order to give the parties additional time to consider the various issues in dispute. Final discussions were conducted in Washington, D. C., on August 16, 1982.

IV. HISTORY OF THE DISPUTE

On January 26 and February 2, 1981, the Brotherhood of Locomotive Engineers, the Organization, in accordance with Section 6 of the Railway Labor Act, served on the members of the NRLC notices of demands to amend numerous provisions of their collective bargaining agreements. On February 5, 1981, the NRLC served its Section 6 Notices requesting a substantial number of changes in the collective bargaining agreements.

After several months of negotiations during which the parties were unable to reach an agreement, the NRLC applied to the National Mediation Board (NMB) for mediation services in relation to the Section 6 Notices served by the respective parties. This application was docketed as NMB Case No. A-10872. Mediation was undertaken under the auspices of Staff Mediation Director E. B. Meredith and NMB Chairman Robert O. Harris. Intensive mediation sessions were held in Washington, D.C. through the end of May 1982.

On June 1, 1982, the National Mediation Board proffered arbitration to the parties in accordance with Section 5, First, of the Railway Labor Act. The NRLC accepted the request but the Organization declined to enter into an agreement to submit the controversy to arbitration. Subsequently, the NMB notified the parties that it was terminating its mediation services on June 10, 1982.

On June 30, 1982, the Organization informed the NMB that its members would engage in a nation-wide strike commencing on July 11, 1982.

The National Mediation Board, pursuant to Section 10 of the Railway Labor Act, informed the President that in its judgment this dispute threatened substantially to interrupt interstate commerce so as to deprive a section of the country of essential transportation service.

V. REPORT AND RECOMMENDATIONS

A. WAGES AND COST-OF-LIVING ALLOWANCES

The NRLC has already reached agreement with eleven other labor organizations in national handling with respect to wage increases and a cost-of-living allowance (COLA). These agreements are retroactive to April 1, 1981, and extend to June 30, 1984. The NRLC offered the same pattern agreement to the BLE.

The pattern established with the other organizations provides:

1. Wage Increases

April 1, 1981	2%
October 1, 1981	3%
July 1, 1982	3%
July 1, 1983	3%

2. COLA

Adjustments every July 1 and January 1 through January 1, 1984, of 1 cent per hour for each .3 point change in the Bureau of Labor Statistics CPI-W during the six-month periods ending in March and September, respectively. Adjustments are limited to 4% every six months and 8% per year.

3. Roll In

No roll-in until December 31, 1983, at which time the entire COLA in effect on January 1, 1983 will be rolled-in. On June 30, 1984, one-half of the outstanding COLA will be rolled in.

The BLE has demanded the following wage and COLA provisions:

1. Wage Increases

April 1, 1981	15%
January 1, 1982	10%
January 1, 1983	10%

2. COLA

Semi-annual adjustments of 1 cent for each .25 point rise in CPI-W City Average, with no maximum or cap.

3. Roll In

Immediate roll-in of all COLA increases.

In addition to these gains, BLE seeks to apply all general wage and COLA increases to overmiles, arbitraries, and special allowances; increase the fireman-off arbitrary (lonesome pay) by 50% plus future increases; increase the overmile rate to 1/100 of the basic daily rate; and increase the present 56 cents differential in local and way freight to 10% above through freight rates. The NRLC position on these issues is discussed below under the "Holddown" section of this Report.

The Board has carefully assessed the merit of the proposals by BLE, which seek to depart from the pattern settlement which has been reached between the NRLC and the eleven organizations. We note that the percentage increase in pay and benefits provided to employees under the pattern settlement is comparable to that received in other major collective bargaining agreements negotiated in the 1981 round of bargaining.

It is correct, as BLE points out, that the pattern settlement, under reasonable assumptions about future increases in the cost of living, provides smaller percentage increases for locomotive engineers than for other crafts due to the impact of the uniform cents-per-hour increases provided by the COLA on the higher level of pay received by the engineers. We have carefully reviewed assertions concerning the compression in pay rates which may have occurred between engineers and other crafts. BLE argues that this compression requires a higher cents-per-hour increase for engineers.

We are not persuaded by this argument. A study of earnings of the various crafts, as opposed to wage rates, indicates far less compression than BLE asserts. Further, some compression of rates has been a general phenomenon in major collective bargaining agreements in recent years. The position of locomotive engineers in the occupational earnings structure of the railroad industry is not so compressed currently as to justify a departure from the wage and benefit pattern that has been established in the industry.

Further, there are additional reasons not to disturb the pattern settlement which has been reached between the carriers and eleven organizations. The record of collective bargaining on the railroads creates an expectation that uniform and non-discriminatory treatment will be given to all crafts or classes of employees if stability of labor-management relations is to be preserved in this industry. Several previous Emergency Boards have reached the same conclusion. We do not find sufficient reason in the current situation to recommend any departure from the pattern settlement.

The BLE notes that the pattern settlement appears to be deficient in several aspects, making the 1981-82 pattern less favorable to employees than the 1978 pattern. First, there is a different schedule for COLA payments than in 1978; second, there is a different roll-in arrangement for COLA payments. Also, the pattern settlement continues the inclusion of a cap on the COLA, as was the case in the 1978 agreement.

The Board notes that there is an interplay between the COLA provisions, including the cap, and the level of general increases, which protects the carriers from uncontrolled pay increases during the term of this agreement, while providing reasonable economic gains for employees. On balance, the Board concludes that the pattern settlement provides an adequate basis for the wage and benefit adjustments for the BLE.

Therefore, it is recommended that the pattern settlement be accepted by the parties, and that other requests for increases in wage-related benefits be withdrawn.

B. HOLDDOWNS

The Carriers urge that the general wage increases and cost-of-living increases not be applied to overmiles, arbitraries, and special allowances. This proposal is linked to another Carrier request for the establishment of a Study Commission to focus on these elements of compensation. (The Study Commission is discussed in greater detail in a subsequent section of this Report).

The basic unit of pay for freight and yard employees is either a basic day of eight hours or 100 miles run. As a practical matter, yard employees do not exceed the 100 miles, and therefore are effectively hourly employees. All of these employees receive the basic day's pay even if their assignments are completed in less than eight hours.

Overmiles are miles over 100 in a day, for which employees receive additional compensation. Until 1964, overmiles were compensated at a rate of 1/100 of the basic day's pay. From 1964 to July 1, 1968, the overmile rate was frozen as a consequence of the "White House Agreement", whereby special adjustments were made in the base pay of yard employees. Subsequent wage increases, including COLA, have been applied to overmiles. According to the Carriers, overmiles now constitute more than one-fourth of the total compensation for through freight service, and 13% of annual earnings for all operating employees.

Arbitraries and special allowances are payments for performing tasks which are paid in addition to the basic daily rate and overmiles. These arbitraries and special allowances constitute approximately seven percent of total earnings of operating employees.

Arbitraries and special allowances may be expressed in dollar amounts, hours, or miles. They may be fixed, such as the \$4.00 per day arbitrary for operating without a fireman, or they may be subject to general wage and COLA increases, such as those expressed in time or miles. Examples of the arbitraries designated by the Carriers for the holddown include those paid for initial and final terminal delay, coupling air hoses, lonesome pay, and changing engines.

The Organization opposes any attempt to freeze overmiles, arbitraries and special allowances, either during the period of a study or thereafter. The Organization's proposals would apply all wage and COLA increases to these payments, as well as providing additional increases for some arbitraries.

The Board has determined that implementation of the Carriers' holddown proposal would have a significant impact on the magnitude of the pay increase which the pattern settlement would provide to employees represented by BLE. As noted above, overmiles and arbitraries constitute about twenty percent of the pay of operating employees. Thus, failure to apply the pay increases in the pattern settlement to these components of pay would reduce by a comparable amount the pay increases received by operating employees under the new agreement.

While there have been isolated instances of holddowns in the post-World War II period, the preponderant practice of the parties, including all major agreements in the last decade, is clear: Pattern increases have been applied to overmiles and to designated arbitraries and special allowances.

For what reasons do the carriers propose a holddown? First, they view overmiles, arbitraries and special allowances as gross distortions of the wage structure which should be eliminated. Because of the importance of this issue to the overall wage structure, we recommend that this matter be studied in depth by the proposed Study Commission.

Second, the carriers seek to use the holddown as leverage in their negotiations with the Organizations concerning overmiles and arbitraries. By denying the application of the wage and COLA increases to overmiles, arbitraries and special allowances, the Carriers hope to create a powerful negative incentive to induce the Organization to consider actively the revision of these pay practices.

We are not prepared to take this step. The Carriers seek the holddown for tactical purposes which would be improper for the Board to advance or endorse. In addition, the proposal for a holddown would be applied on a uniform basis without regard to the merit of any particular pay practice, and without the guidance of the Study Commission that the Carriers press so vigorously. Thus, we recommend that the parties continue their established practice of applying the pattern settlement increases to overmiles, arbitraries and special allowances.

The Board is aware that certain arbitraries and special allowances on certain Carriers' properties do not provide for increases when there are general wage adjustments or COLA increases. The practice of the parties with respect to the application of these elements of arbitraries and special allowances should continue unchanged.

C. THE STUDY COMMISSION

The issue that commanded the most extended discussion by the Carriers is their proposal for the establishment of a "Joint Productivity Commission with finality." The Carriers urge that the Commission be tripartite in nature and be a mechanism for intensive review and negotiation of basic pay concepts and work rules. These include the basis of pay, the whole range of arbitraries, interchange service, and the road-yard division of work. The Carriers also contemplate that the Commission would deal with protection of employees and additional benefits, such as supplemental sickness and disability pay.

The proposal for the establishment of a Study Commission (as we refer to it), does not break new ground. As both parties testified, such a device occupies a venerable position in the history of railroad labor relations. The new element would be the introduction of "finality" into the Commission's determinations. That is, where the Carriers and the Organization fail to resolve their differences, the issues in dispute would be settled by final and binding arbitration.

The Carriers' argument for linking the Study Commission to binding arbitration is based on three elements. First, they assert that the record is clear that without "finality", the most searching review of pay provisions and work rules is unlikely to result in contract changes which are required in the new technological and market environment. And if the changes are forthcoming, the process is excruciatingly slow so that serious economic harm will be inflicted on the industry in the interim. In particular, the Carriers cite experience with the Presidential Railroad Commission (PRC) in 1960-62, and the Standing Committees set up on the recommendation of Emergency Board No. 178. According to the Carriers, most of the recommendations of the PRC have not been implemented and the Standing Committees have not had a perceptible impact on the web of work rules and pay practices in the railroad industry. They further assert that this glacial pace of change can no longer be accepted in the face of heightened competition engendered by deregulation.

Second, the Carriers state that existing pay practices are broadly obsolete and give rise to severe inefficiencies in the utilization of manpower and equipment. Also, the current system of relating pay to mileage and the arbitraries leads to an irrational relationship between actual work performed by the operating employees and the distribution of individual earnings. In other words, the stakes involved in a revision of pay practices and work rules are sufficiently large to justify resort to final, binding arbitration in resolving interest disputes.

Third, the Carriers argue that the threatened imposition of binding arbitration will create incentives for the parties to reach agreement on a voluntary basis so that, in most cases, the final step will not be utilized. They note experience with the resolution of disputes involving interdivisional runs and pooled cabooses to support the notion that the primary effect of building "finality" into a system of dispute resolution is to induce the parties to avoid its imposition rather than to create a framework for widespread compulsion. In other words, the threat of final and binding arbitration will advance, rather than retard, voluntary agreement.

The Organization counters these assertions with traditional arguments against undermining free collective bargaining, embellished by recognition of the special history of labor relations in the railroad industry. It states that most of the arbitrables were negotiated voluntarily by the Carriers and were put into effect as the quid pro quo for settling existing disputes. For example, the air hose coupling arbitrary was introduced to resolve work jurisdiction disputes between carmen and trainmen. Similarly, lonesome pay for the locomotive engineer was adopted when the fireman was removed from most freight and yard service.

The Organization also contends that the Carriers are not blameless with respect to the limited achievements of prior study commissions. That is, sharp policy differences among the Carriers, which reflect different economic and operating conditions, have thwarted the development of the consensus that is necessary to carry out fruitful negotiations with the Organization. Moreover, the administration of the basis of pay and the system of arbitrables are both complicated and varied so that effective negotiations on these issues are best carried out at the local, rather than the national, level.

In our judgment, the question of imposing "finality", or binding arbitration, on the procedures of a Study Commission has the most serious implications for the nature of collective bargaining in the railroad industry. Undoubtedly, some of the work rules and arbitrables have outlived their usefulness and are not conducive to a modern, efficient railroad system. The dual basis of pay, which relates earnings to a combination of mileage traveled and elapsed time, has remained substantially the same for sixty-five years, resisting sweeping changes in motive power, traffic control systems, and other key elements of railroad operation. And, as the Carriers assert, when adjustments in work rules and pay practices are introduced, they are generally the outcome of negotiations that extend far beyond the practical time frame of managerial requirements and most bargaining relationships. Progress on this front is likely to be seriously impeded by political considerations that play on both parties, the sheer complexity of the issues under consideration, and a multi-tiered bargaining structure that diffuses decision-making authority.

The key issue then, is whether these considerations justify a recommendation by the Board that the parties adopt, over the strong opposition of the Organization, a Study Commission approach which embraces final, binding arbitration. We do not believe that this course of action would be constructive or desirable. It may be true that binding arbitration is necessary in those situations where the parties are denied the usual forms of self-help associated with collective bargaining. Such is not the case in this industry. The Railway Labor Act imposes elaborate procedural requirements on the parties, but in the end both the Carriers and the Organizations are free to invoke a wide range of sanctions as part of the bargaining process. The substantive concerns expressed during the course of the formal hearings are themselves the product of collective bargaining. The fundamental principles of this institution should not be set aside because one of the parties finds the results to be onerous or perceives a chronic tactical disadvantage in negotiations. Binding arbitration is, of course, a widely accepted element in contract administration. It is quite another matter, however, to endorse the concept of "finality" in vital interest disputes. Indeed, a reasonable conclusion may be reached that the problems of collective bargaining in the railroad industry arise, in a large measure, because of the parties' excessive reliance on intervention by the Government and third-parties.

On weighing all of the arguments, we endorse the desirability of the broad Study Commission concept proposed by the Carriers. The testimony presented to the Board clearly demonstrated that an intensive review should be conducted by the parties of various work rules and pay practices in light of the new technological and economic circumstances of the industry. Lectures on the virtues of free collective bargaining, no matter how stern, will not change the present character of railroad collective bargaining. Accordingly, we recommend a set of guidelines that go beyond past experiences while stopping short of binding arbitration, which we believe would further weaken the bargaining process. These recommendations reflect our judgment that a more detailed structure should be specified for the Study Commission, while creating both incentives and the opportunity for resolving differences through mutual agreement.

We recommend that a Study Commission be established by the parties in accordance with the following guidelines:

1. The Study Commission should be organized on a tripartite basis. It should be composed of an equal number of Carrier and Organization representatives. The chairman should be a neutral who should be selected by mutual agreement of the parties within 45 days after the ratification of the new labor agreement. In the event that the parties fail to agree on

a selection of a neutral within 30 days, the parties shall confer with the Chairman of the National Mediation Board regarding the selection.

2. The chairman shall confer promptly with the parties to establish the agenda of the Study Commission. If the parties fail to agree on the agenda in 30 days, it shall be determined by the neutral. In any case, the agenda should be restricted to a limited number of items. Drawing on the concerns expressed by the parties in their testimony, the Board recommends that the Commission's agenda should be limited to the following issues: the basis of pay and related alternatives, initial and final terminal delay, the air hose coupling arbitrary, the exchange of engines arbitrary, road/yard restrictions, supplemental sick pay, disability pay, personal leave, and principles and procedures for stabilizing the pay structure of the operating crafts in response to earnings adjustments arising from crew consist agreements.
3. In consultation with the parties, the neutral shall establish a time table for bilateral negotiations between the Organization and Carrier representatives on the designated issues. In general, this period of bilateral negotiations should not exceed 90 days. If the parties fail to reach agreement or demonstrate evidence of substantial progress in resolving the issues within the specified time period, the neutral shall convene hearings on the matter in dispute and formulate substantive guidelines to further advance negotiations. The parties will then negotiate within these guidelines for a period not to exceed 60 days.
4. If, at the end of this second negotiating period, no agreement is reached, the neutral shall exercise the right to publish a non-binding recommendation concerning the unresolved issue or issues.
5. On or before December 1, 1983, the chairman shall issue recommendations. If, after 60 days, the parties have not been able to resolve the matters at issue, either party may serve proposals within the framework of the recommendations, and pursuant to Section 6 of the Railway Labor Act.
6. Most of the issues proposed for the agenda are equally applicable to the other organization of operating crafts. Therefore, the Board strongly recommends that active consideration be given to establishing a combined Study Commission or insuring that

there is effective coordination between the two Commissions through the appointment of the same neutral for both Commissions.

We believe that the structure and operating guidelines of the proposed Study Commission will facilitate progress by the parties in resolving many important and complex problems. The need to modify long-established work rules and practices to conform to changing conditions is overdue. As in all such experiments, success or failure will depend, in a large measure, on the good faith of the parties and their commitment to make the procedures work. We fully expect that future Emergency Boards will, as we have done, carefully weigh the experience of the Study Commission concept in developing their recommendations if subsequent disputes arise over the same set of issues that we have addressed here.

D. EXPENSES AWAY FROM HOME

Among its various proposals to adjust total compensation, the Organization seeks to enhance existing provisions concerning expenses away from home. The proposals include increasing the current meal allowance, changing the basis for calculating lodging allowances, and extending the coverage of away from home expenses to employees who are not presently entitled to such payments.

The weight of the testimony before the Board, and apparently the precedent negotiations, related to the meal allowance. An explicit meal allowance was first agreed to by the parties in 1964. An initial allowance is provided to an operating employee when held for four hours or more at a designated terminal. An additional stipend is payable after the employee is held for eight subsequent hours. When it was first instituted, the allowance was \$1.50. It has been adjusted twice, in 1972 and 1978. The allowance is presently set at \$2.75.

The Organization has pressed to raise the meal allowance to \$6.00, citing the erosion by inflation of the real value of this payment since it was instituted in 1964. The earlier adjustments arrested this decline, but the sharp rise in the meals-away-from-home component of the Consumer Price Index since the last increase in 1978 has further depressed the purchasing power of the allowance. The Carriers, on the other hand, contend that the \$2.75 is supplemented by 12 cents per hour that was incorporated in the base pay of all operating employees in the past to defray the cost of meals, whether or not the specific work situation justified such a payment. They also assert that the meal allowance for maintenance of way employees -- the other group which receives such a payment -- is not as generous as the formula applicable to the operating crafts. In recognition of the impact of inflation, however, the Carriers have offered to increase the meal allowance by 75 cents to \$3.50, under the existing rules for eligibility.

We recommend that an adjustment be made that will restore the real value of the meal allowance when it was last increased in 1978, but does not compensate for the loss of purchasing power since the allowance was instituted in 1964. In previous negotiations the parties accepted fluctuations in the real value of the payment; but, inflation has been so prodigious since 1978 as to justify a more generous increase than has been offered by the Carriers. Insufficient evidence was offered to support any modification of the other rules governing expenses away from home, and we do not recommend that changes be made in these provisions.

E. MORATORIUM

At the time the BLE and Carriers executed the 1978 Agreement, they also executed a side letter which stated that the moratorium provision of the Agreement was not applicable either to pending or prospective notices that sought to adjust compensation relationships between the engineer and other members of the crew, where compensation had been modified for those other crew members as a result of a change in the crew consist. A similar exception had been agreed upon in the 1975 Agreement.

The Carriers urge that we recommend the elimination of this exception to the Moratorium. They further ask the Board to recommend a comprehensive Moratorium provision that would ensure stable labor relations and certainty of labor costs during the term of the Agreement.

The Carriers concede that they made an error when they granted the above-cited exceptions, and state that to accede to the BLE's request for a "flexible" moratorium will ensure that the two Operating Organizations will continue to "leap frog" over each other in order to gain a "lonesome pay" advantage to the financial detriment of the Carriers. The Carriers insist that to permit the BLE to serve a "crew consist" notice in those instances where individual carriers have negotiated a crew consist agreement with the United Transportation Union (UTU), results in the UTU subsequently filing a Section 6 Notice to again adjust compensation because the carrier and the BLE have negotiated a parallel agreement. The Carriers assert that this leap frogging must stop. They also contend that they are entitled to correct their prior mistake, and that the Board should not perpetuate this sequence of events.

The BLE accepts the general concept of the Moratorium as a means for the maintenance of labor peace and stability of labor costs. It strenuously objects, however, to the Carriers' proposal to eliminate the existing exception which would bar it from progressing proposals for an engineer wage differential on those properties where the carrier and the UTU had executed a crew consist agreement. The BLE insists that it must preserve the means to protect the traditional differential in pay between the engineer and other train crew members. It stresses that it cannot accept the crew consist agreements between the UTU and the Carriers which relegate the engineer's pay position to a subordinate status.

The BLE asserts that the Carriers recognized the soundness of its position when they agreed to the moratoria exceptions in the 1975 and 1978 Agreements. The initial reasons for continuing the exception have not lost their validity. The BLE further argues that the Board would create an inequitable situation if it denied the Organization's request to retain its right to negotiate with the Carriers on this issue.

The Board recognizes and accepts the need of the parties to enjoy a degree of surcease from prolonged bargaining. It is an established practice in the American collective bargaining system that, after the ratification of the agreement, the parties should enjoy a period of labor stability. While the Board is aware of the BLE's problem, we give somewhat greater weight to the unsettling impact on industry labor relations of continuous negotiations between the parties over the issue of adjusting the pay differential between members of the train crew.

The Board, therefore, recommends that BLE be allowed to file new notices and to progress those notices already filed, dealing with changes in engineer compensation where there is a change in the compensation relationship as a result of the negotiation of a crew consist agreement between a given Carrier and the UTU. However, during the life of this Agreement, the BLE may only progress such notices within the peaceful procedures of the Railway Labor Act for resolving disputes.

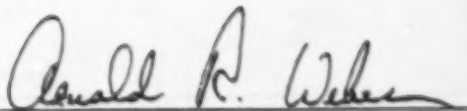
Notwithstanding this limited exception, the Board strongly urges the parties to accept the discipline underlying a comprehensive moratorium so that they will enjoy labor stability during the term of the agreement. Moreover, they should not attempt to erode this Moratorium provision by creating loopholes or technical evasions.

F. WITHDRAWAL OF NOTICES

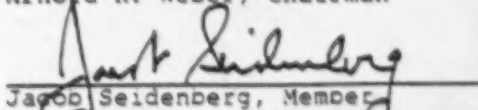
During their presentations, the parties put forward various other proposals concerning changes in the Agreement. These proposals were advanced either during the formal hearings or the informal discussions between the parties and the Emergency Board. To the extent that these proposals have not been treated above, or referred to the Study Commission, the Board recommends that they be withdrawn.

* * *

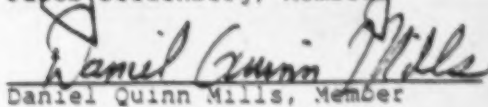
Respectfully submitted,



Arnold R. Weber, Chairman



Jacob Seidenberg, Member



Daniel Quinn Mills, Member

APPENDIX

EXECUTIVE ORDER

- 12370 - - -

CREATING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE
BETWEEN THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND CERTAIN
RAILROADS REPRESENTED BY THE NATIONAL CARRIERS' CONFERENCE
COMMITTEE OF THE NATIONAL RAILWAY LABOR CONFERENCE

A dispute exists between the Brotherhood of Locomotive Engineers and certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference designated on the list attached hereto and made a part hereof.

This dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended; and

This dispute, in the judgment of the National Mediation Board, threatens substantially to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation service.

NOW, THEREFORE, by the authority vested in me by Section 10 of the Railway Labor Act, as amended (45 U.S.C. 160), it is hereby ordered as follows:

Section 1. Establishment of the Board. There is established effective July 10, 1982, a board of three members to be appointed by the President to investigate this dispute. No member of the board shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier.

Sec. 2. Report. The board shall report its finding to the President with respect to the dispute within 30 days from the date of its creation.

Sec. 3. Maintaining Conditions. As provided by Section 10 of the Railway Labor Act, as amended, from the date of the creation of the Emergency Board and for 30 days after the board has made its report to the President, no change, except by agreement, shall be made by the carriers or by their employees, in the conditions out of which the dispute arose.

Ronald Reagan

THE WHITE HOUSE,
July 8, 1982.

APPENDIX OF RAILROADS

Ann Arbor Railroad
 Atchison, Topeka and Santa Fe Railway Company
 Belt Railway Company of Chicago
 Boston and Maine Corporation
 Burlington Northern Railroad Company
 Camas Prairie Railroad Company
 Canadian National Railways:
 St. Lawrence Region, Lines in the United States
 Central of Georgia Railroad Company
 Central Vermont Railway, Inc.
 The Chessie System:
 Baltimore and Ohio Railway Company
 Baltimore and Ohio Chicago Terminal Railroad Company
 Chesapeake and Ohio Railway Company
 Staten Island Railroad Corporation
 Chicago and North Western Transportation Company
 Chicago, Milwaukee, St. Paul and Pacific Railroad Company
 Colorado and Southern Railway Company
 Denver and Rio Grande Western Railway Company
 Detroit, Toledo and Ironton Railroad Company
 Elgin, Joliet and Eastern Railway Company
 The Family Lines:
 Seaboard Coast Line Railroad Company
 Gainesville Midland Railroad Company
 Louisville and Nashville Railroad Company
 Clinchfield Railroad Company
 Georgia Railroad
 Atlanta and West Point Railroad Company:
 The Western Railway of Alabama
 Ft. Worth and Denver Railway Company
 Grand Trunk Western Railroad Company
 Houston Belt and Terminal Railroad Company
 Illinois Central Gulf Railroad Company
 Indiana Harbor Belt Railroad Company
 Joint Texas Division of the CRI&P and FW&D Railway Company
 Kansas City Southern Railway Company:
 Louisiana and Arkansas Railway Company
 Longview, Portland and Northern Railway Company
 Minnesota Transfer Railway Company
 Missouri-Kansas-Texas Railroad Company:
 Oklahoma, Kansas and Texas Railroad Company
 Missouri Pacific Railroad Company
 New York Dock Railway
 Norfolk and Portsmouth Belt Line Railroad Company
 Norfolk and Western Railway Company
 Northwestern Pacific Railroad Company
 Ogden Union Railway and Depot Company
 Pittsburgh and Lake Erie Railroad Company
 Pittsburgh, Chartiers & Youghiogheny Railway Company
 Portland Terminal Railroad Company
 Richmond, Fredericksburg and Potomac Railroad Company
 Sacramento Northern Railway
 St. Louis Southwestern Railway Company
 Soo Line Railroad
 Southern Pacific Transportation Company:
 Western Lines
 Eastern Lines
 Southern Railway Company:
 Alabama Great Southern Railroad Company
 Atlantic and East Carolina Railway Company
 Terminal Railroad Association of St. Louis
 Toledo Terminal Railroad Company
 Union Pacific Railroad Company
 Western Pacific Railroad Company
 Youngstown and Southern Railway Company

The CHAIRMAN. Thank you so much.

Now let me just ask you a few questions with regard to the Secretary's testimony: Do you agree that under all the facts and circumstances that you presently know of, that the recommendation by the Secretary is probably the best recommendation that could be made to the Congress at this time?

Mr. HARRIS. Mr. Chairman, I hate to dodge this but my problem is that if you were to pass some other recommendation, such as a simple prohibition against a strike for a period of time, which I gather has been referred to, I would have to be the mediator with the parties. If I say what my idea of beauty is, I am afraid they might not like me back in the room again, and it probably would be better if I did not answer that.

The CHAIRMAN. That is a fair comment. I note that the proposed legislation implements the report and recommendations of the Emergency Board which were sent to the President on August 19. Now the report covered five issues, including the moratorium and the pay differential provisions, and the Emergency Board made specific recommendations in these areas. Now did the parties agree to the four recommendations on the issues other than the pay differential and moratorium, and were they agreed to without modification or further refinement?

Mr. HARRIS. They were agreed to. There are two modifications. One is, the expenses away from home was changed slightly, by a couple of cents per time, and there has been fleshing out of what the study commission should cover, and there has been a more detailed listing of what the subjects before the study commission should be than the listing that was in the Emergency Board report. Other than that, they are basically what the Emergency Board recommended.

The CHAIRMAN. How much leeway do the parties have in renegotiating these and other issues in an effort to reach a compromise on the pay differential and moratorium question?

Mr. HARRIS. I am sorry. I did not hear the first part of your question.

The CHAIRMAN. How much leeway?

Mr. HARRIS. Oh, they had complete leeway. I mean, if both sides wish to agree on something they could do anything they want. The recommendations of the Emergency Board were not in any way binding upon them.

Now I should point out, there was some reference, I think when I came in, Senator Metzenbaum was saying something about arbitration. When there were six issues outstanding, the union did not wish arbitration and the carriers agreed to arbitration when we offered the arbitration. At this point in time there is one issue outstanding and the question of whether either or both of them would now agree to arbitration is a very different question than it was several months ago. I think you would have to ask the parties what their present view is.

The CHAIRMAN. I see. I note that only 10 days elapsed between the Board's proffer of arbitration on June 1 and the Board's release of the parties on June 10. Were you required by law to release the parties to start the cooling off period?

Mr. HARRIS. Under the law, once we say that we no longer feel mediation would be fruitful, it is up to the parties to decide whether they wish to accept arbitration or refuse it. When either side refuses arbitration, we are required to tell the other party that, and that starts the 30 day period. That is a ministerial act that we have no control over. Once we have said, as we did on June 1, "We don't think our efforts have been successful," it is up to the parties then to determine the date.

The CHAIRMAN. What resources do you have at your disposal to encourage the parties to agree to binding arbitration?

Mr. HARRIS. Nothing except reason and logic.

The CHAIRMAN. Are you satisfied that whatever reason and logic was exercised was fully utilized before the parties were released?

Mr. HARRIS. Yes. I think that when the parties decided they did not want arbitration because they did not want an outsider making the decisions that they felt that they should make, I think the carriers agreed to arbitration because they did not want to go forward with this process particularly; but I do not think that either side was anxious to have an outside however qualified, come in and make their determination for them.

The CHAIRMAN. Senator Randolph, do you have any questions?

Senator RANDOLPH. Only one that is already a part of the record, perhaps not spoken from the witness stand, but I want the 10 States most affected, impacted by the rail strike to be placed at this point—with your permission, Mr. Chairman—

The CHAIRMAN. I already did place them in the record.

Senator RANDOLPH. I am sorry, then. I would want to comment that the percent of work force unemployed in these top 10 States, the highest would be the State of West Virginia. We would have 5 percent of the work force that would be affected. Is there any comment you would want to make on what that would do to a State and is doing to a State like West Virginia?

Mr. HARRIS. I am sure it would hurt the economy of the State of West Virginia greatly.

Senator RANDOLPH. Pardon me?

Mr. HARRIS. I said I am sure that the continuation of a strike would hurt the economy of the State of West Virginia.

Senator RANDOLPH. Not only hurt it, it is devastating; isn't it?

Mr. HARRIS. Absolutely, sir.

Senator RANDOLPH. Yes, devastating to our State, which now has an unemployment rate, Mr. Chairman, of almost 14 percent. I am not trying, you know, to speak of West Virginia as a State that has to have particular attention, but this impacts in a very, very crucial manner, the continuation even of an hour a day, isn't that correct, on the State of West Virginia?

Mr. HARRIS. Yes, sir.

Senator RANDOLPH. On our people, and on the unemployment that will mushroom to the 5 percent that we have just indicated of the work force. Is that correct?

Mr. HARRIS. Yes, sir.

Senator RANDOLPH. Thank you, and thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Harris. We appreciate your testimony.

Mr. HARRIS. Mr. Chairman, Mr. Roland Watkins, who is accompanying me, is a member of my staff who is also acting as staff for the Emergency Board, and he will remain here in case you need any technical assistance.

The CHAIRMAN. Well, we are happy to have you with us.

I believe what we are going to have to do is recess, because of the delay in witnesses. We will recess until a quarter to 2.

Senator RANDOLPH. Mr. Chairman, who are the following witnesses?

The CHAIRMAN. The remaining witnesses are Charles Hopkins, the chairman of the National Railway Labor Conference; John Sytsma, the president of the Brotherhood of Locomotive Engineers; and Fred Hardin, the chairman of the Railway Labor Executives Association. With those three witnesses, we hope to conclude this hearing shortly after we reconvene at a quarter to 2.

Senator RANDOLPH. You are asking that at a quarter of 2 we return?

The CHAIRMAN. That is right. In other words, we will recess until a quarter of 2, we will return, and we will take the remaining testimony.

Senator RANDOLPH. Thank you, Mr. Chairman.

[Whereupon, the committee recessed, to reconvene at 1:45 p.m. the same day.]

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

We will take the testimony of Mr. Charles Hopkins at this time. We appreciate having you here. You are representing the National Railway Labor Conference, representing the industry in this matter.

Mr. HOPKINS. Yes, sir.

The CHAIRMAN. We will be happy to take your statement.

STATEMENT OF CHARLES I. HOPKINS, CHAIRMAN, NATIONAL RAILWAY LABOR CONFERENCE

Mr. HOPKINS. Thank you, sir. I am pleased to be here. I appreciate the opportunity.

The CHAIRMAN. Thank you.

Mr. HOPKINS. For the record, my name is Charles I. Hopkins, Jr., chairman of the National Railway Labor Conference and the National Carriers' Conference Committee. We represent virtually all of the railroads in the country, and particularly with respect to the problem that comes before your committee, we represent the railroads that are participants in that dispute.

I have a prepared statement which I ask leave to submit.

The CHAIRMAN. Without objection, we will put your complete statement in the record.

Mr. HOPKINS. Thank you, sir.

In the interest of time I will not either read or paraphrase the written statement. I will just offer, I hope, a few comments and then make myself available for whatever questions there may be.

We, that is, the railroad industry, do not appear before you as a petitioner. I do not say that by way of suggesting that we disagree

with the legislation that has been proposed, and in fact we agree with it and support it in terms of the public interest. We know the enormous damage this strike is doing to the country, to the economy of the country, and to many people, and we certainly understand the concern with those enormous impacts and therefore the desirability of bringing to an end this disruption of rail service. We are fully in support of that being done.

I am handicapped in the sense that I was on the House side before coming over here, and so I am not privy to what has gone before and what concerns may have been expressed.

Senator METZENBAUM. Tell us what is happening on the House side.

Mr. HOPKINS. Sir?

Senator METZENBAUM. Tell us what is happening on the House side.

Mr. HOPKINS. I came over here directly. I had completed my testimony. I had been preceded by Secretary Lewis and Bob Harris of the National Mediation Board. I was to be followed, I believe in this order, by Fred Hardin who is president of the UTU and then John Sytsma, who is president of the Brotherhood of Locomotive Engineers. They were in recess at the time I left, so I do not know how far they may have progressed since I left.

[The prepared statement of Mr. Hopkins follows:]

September 21, 1982

STATEMENT OF CHARLES I. HOPKINS, JR.
CHAIRMAN, NATIONAL RAILWAY LABOR CONFERENCE

The National Railway Labor Conference, through its National Carriers' Conference Committee, represents almost all of the nation's Class I railroads in national collective bargaining with 13 unions that represent crafts or classes of employees on those railroads. One of those unions is the Brotherhood of Locomotive Engineers. As Chairman of the Conference and Committee, I have been the principal spokesman for the railroads in those negotiations.

Agreements have been reached with all of the unions except the BLE in the current round of national negotiations, but the procedures mandated by the Railway Labor Act have been exhausted in the dispute with the BLE, and on September 19, 1982 that union commenced a national railroad strike of the railroads involved in the dispute. If that strike is allowed to continue, it will have a disastrous effect upon the nation's economy and exacerbate the current recession. Emergency legislation has been proposed by the Administration that will terminate the strike and resolve the underlying labor dispute.

The dispute with the BLE commenced on January 26, 1981, when that union and the carriers served notices of their proposals for a new national agreement effective April 1, 1981. After extensive national negotiations failed to settle the dispute, the carriers applied to the National Mediation Board for its mediation services and the dispute was docketed for mediation on November 24, 1981. However, prolonged mediation failed to resolve the dispute, and the NMB on June 1, 1982 requested the parties to agree to voluntary arbitration of the dispute. Although the carriers accepted that proffer of arbitration, it was

refused by the BLE. Consequently, as it was required to do by the Railway Labor Act, the NMB on June 10, 1982 terminated its mediation services. On July 8, 1982, prior to the expiration of the 30-day status quo period following the termination by the NMB of its services, President Reagan appointed Emergency Board No. 194 to investigate the dispute and report its recommendations for a settlement of the dispute, in Executive Order 12370. That was done pursuant to Section 10 of the Railway Labor Act (45 U.S.C. § 160), which authorizes the appointment of an emergency Board in the President's discretion if a dispute "threatens substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service"

In the meantime, new national agreements had been made with all of the other unions except the United Transportation Union without the necessity of an emergency board. The dispute with the UTU involved essentially the same issues as the dispute with the BLE (except for a carrier proposal to eliminate any requirement of cabooses which was not involved in the dispute with the BLE), and followed roughly the same course through exhaustion of the procedures of the Railway Labor Act. Indeed, most of the initial conferences and mediation sessions were held jointly with the two unions. President Reagan created Emergency Board No. 195 to investigate the UTU dispute, on July 21, 1982, and appointed the same members to that Board as he had appointed to Emergency Board No. 194. The Chairman of both Boards was Dr. Arnold R. Weber, President of the University of Colorado. The other members were Dr. Jacob Seidenberg, an arbitrator with substantial experience in the railroad industry, and Dr. Daniel Quinn Mills, Professor at the Harvard Graduate School of Business Administration.

Emergency Board No. 194 issued its Report on August 19, 1982 and Emergency Board No. 195 issued its Report on August 20, 1982. Except for the caboose issue which related only to the UTU, the recommendations of those Boards for a settlement of the disputes were identical. In essence, those recommendations were for a series of general wage increases and cost-of-living adjustments over the 39-months period of the recommended agreements, commencing as of April 1, 1981, and for increased fringe benefits in accordance with the pattern established by agreements with the other unions; that the wage increases and C-O-L adjustments apply to arbitraries and overmiles; that allowances for expenses away from home be increased; that the UTU afford the carriers some relief in regard to the use of cabooses; that the parties establish a study commission with a neutral member, but without finality, to investigate and make recommendations as to the basis of pay, arbitraries and certain other issues; and a moratorium provision that would assure labor stability and protect the carriers from being coerced into granting further costly benefits during the term of the new agreements. The issues referred to the study commission would include the issue regarding wage relationships that is at the heart of the only remaining disagreement in the dispute with the BLE.

The carriers were disappointed with those recommendations. The recommended settlement as to wage and fringe benefits, together with the similar agreements on those issues with the other unions, is expected to increase the wage costs of the carriers by 28.8% over 39 months, although the exact amount will depend upon the amount of the C-O-L adjustments. This seems to us to be very generous to the employees, particularly in view of the current recession in which the railroads as well as other industries have been hit hard and of the fact that unions in some other industries have even gone so far as to cut back on benefits previously agreed. In view of these circumstances, this seemed to us to be an unusually appropriate time to reconstruct the basis of pay for

- 4 -

operating employees, which every neutral authority examining the issue has considered to be obsolete, under which 100 or less operating miles are considered to be the equivalent of a basic day's work, and in many instances additional arbitrary payments that no longer have any justification must be made. We had hoped, therefore, for a recommendation that the study commission could impose a final solution if the parties were unable to agree in regard to such issues, and that in the meantime the cost of arbitraries and overmiles would be held down by excluding them from any general wage increases and C-O-L adjustments.

Nonetheless, the carriers accepted the recommendations of the Emergency Boards, and we did reach an agreement with the UTU in accordance with the recommendations of Emergency Board No. 195, on September 15, 1982, subject to ratification by the Union's General Committees of Adjustment as required by its Constitution. That agreement included a provision on the difficult issue of cabooses which is not involved in the dispute with the BLE. While we offered the same agreement to the BLE in regard to other issues, and reached tentative agreements in language that would dispose of all but one of those issues, the BLE has adamantly refused to accept the recommendation of Emergency Board No. 194 in regard to the moratorium provision. And, when the 30-day status quo period following the Report of that Board expired at 12:01 a.m., September 19, 1982, the BLE commenced the national railroad strike that is now underway.

It is regrettable that the BLE is inflicting this damage on the nation and its railroads in spite of the recommendations of the Emergency Board and the efforts of federal mediators. While the carriers have not proposed Congressional action, it seems clear to us that emergency legislation such as has been proposed by the Administration is essential if a

- 5 -

prolonged strike is to be avoided. We note that on at least 10 prior occasions, the Congress has enacted emergency legislation preventing the commencement or continuation of broad railroad strikes, and such legislation may be even more justifiable now in view of the economic recession and the entirely unjustifiable nature of the BLE's demands in regard to the sole issue remaining in dispute.

The BLE insists that it be allowed during the term of the recommended national agreement to press demands upon individual railroads for additional wages in the form of a special allowance, even to the point of a strike, if the railroad has agreed with the UTU to pay such a special allowance to other train crew members in return for being permitted to reduce the number of brakemen on trains. This would be in addition to the special allowance that already is made to engineers represented by the BLE if the engine crew does not include a fireman, and in addition to the recommended wage settlement which would result in a projected increase of some 28.8% over the 39 months term of a new agreement. And, the additional special allowance thus demanded in effect would be paid for nothing since reductions in the size of a train crew do not affect the work of the engine crew.

Those unjustified demands by the BLE have engendered equally unjustified demands by the UTU for a special allowance to train crew members when the engine crew does not include a fireman. Emergency Board No. 194 recognized the need for a moratorium that would prevent the two operating unions from continuing "to 'leap frog' over each other in order to gain a 'lonesome pay' advantage to the financial detriment of the Carriers," and recommended that -- while the BLE could serve and progress notice of proposals "dealing with changes in

- 6 -

engineer compensation where there is a change in the compensation relationship as a result of a crew consist agreement between a given Carrier and the UTU," during the life of the new agreement "the BLE may only progress such notices within the peaceful procedures of the Railway Labor Act for resolving disputes." Report, at 16-17. Thus, the BLE could not strike over such notices, and in the meantime the issue of the wage relationship between the employees represented by the two unions could be considered by the study commission in the context of all the problems involved and the positions of both unions as well as of the carriers.

A similar recommendation by Emergency Board No. 195 regarding the UTU's "leap frog" notice has been effectuated in the moratorium provision of the new agreement with that union. Indeed, all of the unions except the BLE have agreed to moratorium provisions that in effect will assure the carriers that they will not be faced with strikes over demands for increased compensation while the new national agreements are in effect. In our opinion, there is no justification whatever for the BLE's intransigence in regard to this issue.

A settlement of the dispute in accordance with the recommendations of the Emergency Board is especially desirable in that it would enable the proposed study commission thoroughly to examine the "leap frog" notices and the entire issue of the wage relationship between the engineers and train crew employees represented by the UTU in the context of the larger problem, of which it is a part, of the proper basis of pay for operating employees. Our agreement with the UTU would refer the wage relationship issue, among others, to the study commission, and we contemplate that one commission

- 7 -

will be established with regard to that and other issues between the carriers and both of the unions. Such a commission could consider the positions of the BLE, the UTU and the carriers, and develop a recommendation that would give appropriate weight to the concerns of all of the interested parties in the context of a reconsideration of all issues going to the basis of pay of operating employees. We are hopeful that such a recommendation would be acceptable to all concerned, but in any event the study commission should be given an opportunity to develop such recommendations without being foreclosed through actions by the BLE to coerce agreement to the proposed additional special allowance.

If the Congress is to enact emergency legislation terminating the strike by the BLE, therefore, we believe that such legislation should accord with the Administration's proposal to give effect to the recommendation of Emergency Board No. 194 in regard to the sole issue remaining in dispute as well as to its other recommendations which have been tentatively agreed to by the parties. While the carriers have not proposed such legislation and are reluctant to abandon the possibility of an agreed settlement in collective bargaining, we must admit that we do not now see any realistic possibility of such an agreement short of a prolonged national railroad strike. A simple extension of the status quo period to enable additional bargaining would serve little apparent purpose since the parties are at an impasse, despite the valiant efforts of Government mediators, and the sole remaining issue is not one that can be compromised by some intermediate solution that would give something to both sides. On the other hand, the emergency legislation which the Administration has proposed would terminate

the national railroad strike by the BLE by giving effect to the recommendations of Emergency Board No. 194. Such legislation should assure labor peace in the railroad industry at least until July 1, 1984, and thus would contribute greatly to a recovery from the economic recession that is now bedeviling the railroad industry and the nation as a whole. I can assure the Congress that the carriers will promptly comply with any such legislation and will do their utmost to bring about recommendations by the study commission that will lay the groundwork for future agreements reconstructing the basis of pay of operating employees -- including the wage relationships involved -- in a manner that reflects existing circumstances rather than those that existed many years ago.

The CHAIRMAN. Mr. Hopkins, could you explain to the committee why you were able to reach an agreement with the UTU, the United Transportation Union, on the strike moratorium issue, but not with the BLE?

Mr. HOPKINS. It was in pursuance of the Emergency Board recommendation. It was a very, very tough issue with the UTU and one of the last, if not the last issue to be resolved, a very important subject, just as important I would expect to the UTU as the BLE on the very same issue, but in the final bargain that was struck they accepted the Emergency Board recommendations and accepted our insistence that during the term of the next agreement, we not be exposed to the potential for strikes.

I can add to that the fact that this is an imperative of our bargaining in the railroad industry. It is true that in outside industries that are not subject to the Railway Labor Act, it is not at all uncommon for the parties to negotiate no-strike provisions, arbitration provisions, but in our case that is, as I said, an imperative of our bargaining. We are cognizant not only of our own interests as business people but of the larger public interest, and so an essential ingredient to us of any national agreement that we make on wages, benefits, et cetera, is that it embody provisions that insure that during the term of that agreement neither the industry nor the country will be exposed to the potential for service interruptions.

We have provisions of that kind in the agreements that we have reached with all of the organizations in this round, including, as of very recently, the UTU. We have had provisions of that kind in the agreements in previous rounds. They are, as I say, just a fundamental and imperative to us of the bargains. There is no justification, in our judgment, for our industry to make these very costly settlements—as the one here—and not have the period of assured labor peace.

Therefore, that is the nub of the problem with the BLE and has been for a long time. The dispute has been negotiated at length, some 20 months. It has been mediated exhaustively and exhaust-

ingly, particularly in the last few days, and I should say that we have had the benefit—that is the parties have had the benefit—of extremely energetic, tireless, inventive mediators, so that I have no hesitancy in saying that the public has been well represented in these negotiations and in the mediation.

Nevertheless, despite the best efforts and good offices of all concerned, a settlement has not been possible. In my judgment the only feasible way of dealing with the condition that now exists—that is, if there is to be legislation—is in the form of the legislation that is submitted to your committee for consideration. I realize that there have been occasions in the past when the cooling off and status quo period has been extended in the hope that during that extended period, collective bargaining, mediation, would work out a successful conclusion. However much that is to be hoped for in general, and in this case specifically, my best judgment is that there is no realistic prospect for a settlement during any extended status quo period, should anyone be thinking about that.

I say that for a number of reasons, foremost among them being that we have negotiated to the point with the BLE that there remains no other issue. Everything else has been resolved tentatively; I say tentatively because obviously until we settle everything, any party is free to change their position on whatever they may choose, but in terms of the negotiations so far we are down to a single issue and that issue has defied certainly our best efforts and those of everyone else to reconcile the parties.

If there were to be an extended status quo period, I think instead of being what is sometimes called a cooling off period, I am afraid it would be a heating up period. Presumably the engineers would be required to pull down their strike. We would have a resumption of rail service but then at the end of whatever time period Congress had allotted, you would again be faced with the same situation because we have truly an intractable issue.

Moreover, if there were such an extension, it would jeopardize the agreement we have only so recently made with the UTU. That agreement with the UTU is tentative, subject to membership ratification. The UTU had, as a part of the negotiations, the identical issue that we have with the BLE, and the UTU agreed with the Emergency Board and with us that the proposals in question would not be, could not be the subject of strike action during the term of the agreement.

If they should find that the BLE gets a better deal, or if the UTU should find that uncertainty remains as to what is going to become of the BLE negotiation, then that does as I say place in jeopardy the ratification of the UTU agreement. Therefore, we could find ourselves down the road, at the expiration of whatever extended period might be adopted, not only with a revival of the same problem we have now with the BLE but also a problem that does not exist with the UTU.

Therefore, those are the main reasons why I say that in our judgment, if there is to be legislation this is the legislation that needs to be adopted.

The CHAIRMAN. Senator Randolph?

Senator RANDOLPH. Thank you very much, Mr. Chairman.

Mr. Hopkins, you have indicated that insofar as the carriers are concerned, that over whatever the period of time, the results as of today leave you either reluctantly or, let's say, realistically at the table saying that you feel that the Congress is at that point where some action—as we have taken actions in the past—must be forthcoming. Is that correct?

Mr. HOPKINS. Yes, sir. It is my judgment that absent action by Congress, the strike will continue and with no end in sight.

Senator RANDOLPH. Again for the record—and I do not want to seem to speak just for West Virginia's condition—but of the 10 States most impacted by a strike of rail workers over a 2- or 4-week period, West Virginia would top the list of 10. Now we are a State, of course, as we know, that moves its product to the consuming public by a network of railroads. That of course is so in coal, it is so in steel, it is so in aluminum, it is so in chemicals, it is so in glass, and on and on.

Therefore, back home, as it were, where I have gone over the State in many sections during the past weekend, we are realistic about this matter from the standpoint of an economy which is depressed at the present time, Mr. Hopkins, and where West Virginia is perhaps in that third position of unemployment with only two States surpassing us. Therefore, with upward of 14 percent of our employables out of work, you can understand that this matter before us today cries out for action.

That does not mean that there are not differences of opinion, and certainly I understand those, but I do feel, with you and with all who will sit at the table, including the Secretary of Transportation, I feel that what is done must be done quickly; not that we work so quickly that we will not do the job which we necessarily must do but I think, Mr. Chairman, that it is imperative that both the Senate and the House act in a matter of this kind. I am sure that is shared by my colleagues but as to just what we should do, perhaps that is not the point I want to stress at the moment but I do stress strongly that with a situation of this kind and a depressed economy, and what this would do to deepen it, a devastating strike upon the body politic of America, that regardless of the issues and the people who are involved, that the country as a whole expects us to bring forth an equitable solution.

Thank you, Mr. Chairman.

Mr. HOPKINS. I quite agree, Senator.

The CHAIRMAN. Senator Kennedy?

Senator KENNEDY. Thank you, Mr. Chairman.

I would like to ask you, Mr. Hopkins, whether if you had a situation where you would be willing as an industry to sit down with the engineers to negotiate this final issue by arbitration, given a limited period of time. Would you object to that?

Mr. HOPKINS. Binding arbitration, that is to say, an outcome that would be binding on both parties?

Senator KENNEDY. Yes.

Mr. HOPKINS. No, sir, unless it included the other affected union, that is, the UTU.

The CHAIRMAN. It would have to be binding on all three, you mean.

Senator KENNEDY. If the UTU agreed to a process where this one issue would be left to binding arbitration between you and the engineers, if they would agree to that—what would your position be?

Mr. HOPKINS. Well, of course, I cannot speak for the UTU but if it were possible to have a forum that would have a binding outcome, that included all interested parties, we would be willing to participate, yes, sir.

Senator KENNEDY. If the UTU would indicate that they would not object to moving ahead in terms of the ratification of their contract if this issue, the final issue, was left to binding arbitration between you and the engineers with a defined period of time would you be willing to participate in that?

Mr. HOPKINS. I cannot speak for the UTU but I do not think we could accept arbitration involving ourselves and the engineers only because this would—pending the outcome, of course—leave the UTU and ourselves in a state of uncertainty as to what the outcome would be, and not knowing whether the arbitration might result in something for the engineers above and beyond what the UTU has settled for. That, I am afraid, would jeopardize the UTU contract.

Senator KENNEDY. Well, the question we would have to ask the UTU is this—if we had an immediate back-to-work order this evening, and we left this one issue to arbitration would you be willing to agree to that?

Mr. HOPKINS. No, sir, not just with the engineers. We would not, sir.

Senator KENNEDY. Why wouldn't you?

Mr. HOPKINS. Because that provides the opportunity or the possibility of the engineers coming out with a result that is better than the settlement that we reached in face-to-face bargaining with the UTU. The nub of this is the conflicting positions of the organizations. What has been going on—and I do not mean this disrespectfully to either organization but just factually—is a display of attempted leapfrogging at the expense of the railroads.

The UTU has, since 1978 when we made the last national agreement, made so-called crew consist agreements, agreements whereby the size of traincrews are reduced on a number of railroads. Part of the bargain for reducing those traincrews is an additional allowance for the remaining traincrew members. The BLE has decided to proceed on individual railroads to try to get a piece of that action, and those are the notices that are in question here.

Where the BLE has succeeded in exacting something extra, an additional allowance for the engineer where the train crew has been reduced, the UTU has served counternotices or retaliatory demands on the railroads, seeking something in addition to what they already have for their people. Presumably, if the carriers were to submit to that and grant any more to the UTU people, then that would revive demands on the part of the engineers so we would have a never ending whipsaw process. That has been a fundamental consideration in this whole negotiation.

We have said from the outset and stood firm throughout that that process has to end, and that is why we are in the posture we are. We tried this whole thing out before the Emergency Board, and the Emergency Board agreed, and now the UTU has agreed

that during the terms of the next agreement neither they, the UTU, will be allowed to take strike action on those notices, nor will the BLE. The BLE has not agreed to that as yet.

However, if somehow, by arbitration or however, the BLE were to be allowed to get something in addition that the UTU has no chance of getting because it has settled, then the UTU agreement would be jeopardized because it is still subject to ratification.

Senator KENNEDY. That is right. I know we will listen to Mr. Hardin from the UTU. I know from personal experience, he is a very capable and able spokesman for his workers, and so he will speak and respond in whatever way he thinks is in their interest.

For the moment I am interested in just looking at it solely from the carriers' position. If the UTU would agree to submit their contract that they have negotiated now for ratification by their membership, and would agree to a back-to-work agreement by the BLE and this one issue being left for arbitration or mediation for a limited period of time, I ask if the carriers would be willing to participate in that negotiation?

Mr. HOPKINS. No, sir, we would not be agreeable to an arbitration involving only ourselves and the BLE. We would renew the proposal that we have advanced before, that the study commission that was recommended by the Emergency Board and that the parties tentatively agreed to and have agreed to with the UTU, that the results of the study commission be binding on all parties. We would agree to that. We have proposed it in the past. That is an appropriate forum for resolving these pay disputes. The idea of the study commission is to examine, on a comprehensive basis, the pay system including specifically pay relationships between these crafts. It is that kind of a forum, involving both unions and also having the full context of pay considerations, that is the proper forum in my judgment in which to consider this issue, rather than to have this issue dealt with in isolation from the larger picture.

We would agree, yes, to finality on a whole spectrum basis from that study commission, but I am afraid I have to say that we could not on a truncated basis.

The CHAIRMAN. Senator Metzenbaum?

Senator METZENBAUM. Mr. Hopkins, I would like to explore the whole subject of voluntarily arbitrating this issue. I come to it from the standpoint of having been a business person who had many employees in unions and also having been a union lawyer, so I do not quite understand your position and I am wondering whether there is not some room for negotiation on it.

Now what we are talking about from the standpoint of money is significant but not really of major proportions, as far as the dollars involved are concerned. Is that a fair statement?

Mr. HOPKINS. I have to respectfully disagree with that, sir, because I could not really put a fix on what is involved. This is a game of oneupsmanship that the organizations are trying to play, exacting tribute from us as they go along.

Senator METZENBAUM. No; I do not want to get into that. We understand—

Mr. HOPKINS. Well, what it would cost depends on how far this whipsaw process would be allowed to go.

Senator METZENBAUM. Well, let's assume there is no whipsaw but if you had—all we are talking about is the question of whether the BLE, under certain circumstances, would be entitled to that extra amount of money which would continue to make them the highest paid part of the industry—

Mr. HOPKINS. No, sir. Again, with respect, that is not an accurate statement. It is incomplete or an oversimplification of it. I think that some misunderstanding may have arisen about some supposed historical wage differential as between engineers and other—

Senator METZENBAUM. Why don't you set out the issue for me as you see it?

Mr. HOPKINS. The issue is the BLE's demand that they be given an additional allowance now over and above the wage pattern settlement that we have made with all of the other organizations, including the UTU, plus the BLE demand that they be allowed to continue to negotiate on individual railroads to exact even more of an allowance during the term of this agreement, plus the BLE demand that during the terms of this agreement they be allowed to enforce their demands by strikes. Those are the three prongs, so to speak.

Senator METZENBAUM. I think that I stand corrected. I think it is a little bit broader. I guess it is pretty hard to figure out how much money is involved but, going back to the question of arbitration, if the UTU would be willing to ratify their contract subject to the issue, this one issue—not the whole BLE demand—subject to this one issue being arbitrated, and the BLE agreed to go back to work immediately and agreed to remain at work even if the arbitrator's decision is a negative one, what is the reasons that you would be unwilling to submit that to voluntary arbitration? I do not call it compulsory arbitration. I am talking about voluntary arbitration.

Mr. HOPKINS. Because I think it would be unfair to us and unfair to the UTU.

Senator METZENBAUM. Well, let's assume the UTU said—we could work out something where the UTU was satisfied. It is important to get the issue resolved. Now going into arbitration, it is not that unusual for Congress in the past to have established another mediation board, another negotiating board, another special commission. They have called them various and sundry things. Therefore, it would not be that unusual to have this unresolved issue still to be resolved by arbitration.

Now my question really is, If the UTU agrees to it, then why wouldn't you be willing to agree to it? You had agreed to arbitrate this at an earlier point, had you not? Somebody said that.

Mr. HOPKINS. No, sir. It has been suggested. We have agreed, and would agree right now to arbitrate, that is, to have finality in a setting in which all of the pay issues, all of the pay relationship issues and all of the interested parties were participants. However, in my opinion it would be extremely unfair to the carriers to put us into a forum with a binding result that would not have the whole array of pay issues and pay relationship issues before it, nor all of the interested parties.

Senator METZENBAUM. Would you want to have all of the issues arbitrated rather than just the one that is remaining unresolved?

Mr. HOPKINS. It cannot be divorced from other pay issues. It is unfair—and I know you do not mean it this way, sir—but it is unfair to isolate this from the whole pay system and attempt to treat with it. You see, because of the complexities and the problems that we have with the pay system, we have been trying for many years, as you perhaps know, to overhaul that pay system. We finally have an agreement with these organizations—that is only tentative, of course, so far with the BLE—to create—

Senator METZENBAUM. With the UTU?

Mr. HOPKINS. We have an agreement with the UTU, yes, sir. I misspoke. This agreement would establish what we have called and what the Emergency Board called a study commission to examine the pay system and recommend changes, including—and the Emergency Board was very careful to make this explicit in its recommendations—including the pay relationship between the engineers and the train service people.

Now that is the kind of a setting in which justice could be done, in which a fair outcome could be expected, because all the parties would be there and all the issues would be there, but to arbitrate now on an isolated proposition of the BLE in isolation from the whole pay system and all of the pay relationships, could lead to a result that would be inappropriate and unfair.

Senator METZENBAUM. Let me ask you, Mr. Hopkins, isn't it possible that an arbitrator may come in with a totally different kind of conclusion with respect to all of the other issues that the parties themselves have already been able to resolve, and that it would be far better to be arbitrating the one unresolved issue than to open up that Pandora's box to the arbitrator? Having said that, let me also comment that certainly any arbitrator who was worth his salt would be taking into consideration everything that had already been done by the mediation board, all of the recommendations that have already been made. Therefore, it seems to me just as an outsider, that if you can reduce the number of issues, you would have a better chance of getting the matter resolved than if you leave it totally open for an arbitrator who has to come in on top of what the parties have already agreed upon.

Mr. HOPKINS. Well, that is exactly what you are suggesting, that an arbitrator could grant something on top of what we have agreed to with all of the organizations. I think the point that I failed to make clear, perhaps, is that an arbitrator looking into these matters in the near term could not possibly know what another arbitrator or a neutral figure might decide made sense in the larger setting that involved all of the pay system and the pay relationships, and it is that larger setting that I maintain is the only forum in which any of these pay issues, including specifically this one that the BLE is pressing, could be satisfactorily and fairly considered.

If I can just amplify a bit, I think there may be a misconception because of so much that the BLE has said about an historical wage differential. There is no such thing. Now it is true that the wage rates of engineers are higher than those of conductors and trainmen. It is, however, a fact that we have a patchwork pay system in our industry, if it can even be called that, so that there are many sources of additional pay other than the wage rates. Those pay ad-

ditives, if I may use that term, differ for the train service people and the engine service people, so that a certain event may cause a trainman or a conductor to get more money but the engineer may not.

The fact is that on average the engineers are far and away the highest paid people in the railroad industry but it has always been the case—I say “always,” at least during my period of involvement in the railroad industry—that conductors, for example, a conductor could make more than an engineer. It varies in terms of the pay additives, it varies in terms of how the mileage is regulated, and it varies in terms of the class of service in which the employee operates.

For example, a through-freight conductor can earn more than a yard engineer. There never has been any kind of a differential, a precise, fixed, or predictable relationship between engineer earnings and those of the train service crafts, so perhaps I am saying it badly but what I am getting at is that the only way to consider fairly, in the element of that highly complicated equation that in total we call our basis of pay or pay system, is in a forum in which the whole ball of wax is before the people who are considering it.

Senator METZENBAUM. You would like to go to an arbitrator all of the issues between the UTU and the BLE and let him decide the whole contract. Is that what you are saying?

Mr. HOPKINS. Yes, indeed, sir. We have proposed that and we came close, not as close as I would like. As you know, in this business close does not count but we did get agreement—tentative so far with the BLE—pursuant to an Emergency Board recommendation, to set up a study commission.

Senator METZENBAUM. I am talking about arbitration. Study commissions just study.

Mr. HOPKINS. Well, we proposed that it be final and binding, and we would be amenable, in fact we would applaud that now so that we would have a forum in which any and all issues, whether initiated on the carriers' side or either of the unions' side, would be fully and fairly ventilated and resolved.

Senator METZENBAUM. Mr. Hopkins, would you be good enough to explain, what is the letter that has normally or has in the past accompanied the settlement with the BLE? Is that where the letter has always been? Is there some letter? I keep hearing about a letter but I do not know what it contains.

Mr. HOPKINS. I think I know what you refer to, sir. It is not a letter, it is an abnormal letter, but what I think that references is the fact that in the last two or three national agreements, really going back to when the first crew consist, reduced crew agreement was made on the Chicago Northwestern Railroad, there has been a side letter, as we call it—you are familiar with that term as a negotiator, I am sure—that permitted the BLE to proceed on the notices of the type that we are talking about here but—

Senator METZENBAUM. To proceed to do what?

Mr. HOPKINS. To attempt to negotiate a special allowance for their people where the UTU had reached an agreement reducing the size of traincrews, not that any carrier or we at the national level ever agreed that there was merit to that BLE position but

they were open to pursue those notices. However, what happened—

Senator METZENBAUM. Was there reservation of the right to strike in those negotiations, in that letter?

Mr. HOPKINS. Not in those words, but they were free to pursue them to strike, yes, sir.

However, then we found what a serious error that had turned out to be—not the first we have made, and I suppose not the last—but when the first agreement was made by an individual railroad with the BLE granting it a special allowance where the traincrew had been reduced, even though the size of the traincrew has nothing to do with the work or the job of the engineer—when the first agreement was reached giving that special allowance to the engineer the UTU served counternotices demanding that their people be given additional money for operating on a crew that did not have a fireman. We were, as I say, then confronted with what we perhaps should have expected but did not, the leapfrogging, whip-saw approach where one union tried to seek an advantage and if they were successful, then the other retaliated. Therefore, the inevitable result if we submitted to it would be an ever rising tribute to the members of each organization.

That happened during the term of the last agreement so we said at the outset of these negotiations, and have maintained ever since, that we simply cannot abide that kind of a process and there must be peace and we must be free from that kind of whipsaw tactic during the term of the next agreement. We explored that very thoroughly before the Emergency Board. They examined it objectively, thoroughly, and they agreed that both organizations should be allowed to pursue those negotiations on a local basis but should not be allowed to strike over them.

Therefore, the only place we have ever had the opportunity to try out this subject thoroughly, the people found that that was right, that we should not be exposed, the industry should not be exposed to strikes or strike threats by either organization over those notices. However, the Board also recommended, and we agreed with this recommendation, that those issues ought to be considered by the study commission, a forum where that and all of the other issues are to be considered.

Senator METZENBAUM. How would you feel if this committee came out, on an order to terminate the strike, and at the same time did that which the previous Congresses have done and that is, ordered compulsory arbitration?

Mr. HOPKINS. With the BLE only, and only on the BLE proposal and nothing else? I would feel awful. I would feel that we had failed totally.

Senator METZENBAUM. And if we ordered compulsory arbitration with the BLE and the UTU with this issue only?

Mr. HOPKINS. I would feel a little better but—I say this sincerely. This is not just some flight of advocacy. I really think one has to understand the long history of our pay system and the complexity of it in order to appreciate the fact that it is not possible to tamper with a piece of it without making matters worse rather than better.

Senator METZENBAUM. You have sort of proved my case, and my case is that the parties ought to voluntarily come to an agreement to terminate the strike and go to arbitration, and get the issues resolved, rather than Congress ordering them.

Mr. HOPKINS. All we have to do, sir, is agree that the neutral chairman of the study commission will have final and binding authority, and we agree to that today.

Senator METZENBAUM. He has already heard the case. He is making—

Mr. HOPKINS. No, no, no. This is a study commission that we have created that has not come into existence yet.

Senator METZENBAUM. I see.

Mr. HOPKINS. We would be willing to clothe the neutral chairman of that study commission with full authority to adopt final and binding resolution of any and all issues that come before him.

Senator METZENBAUM. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Metzenbaum.

Senator METZENBAUM. Could I just make a final point?

The CHAIRMAN. Sure.

Senator METZENBAUM. Would your response be any different if you had, say, a 10-day period and then if there was no agreement—this would be just between the BLE and the carriers on this one point—and if there was no agreement, go back to the implementation of the Emergency Board recommendations? It would at least give them one opportunity. It gets the focus, the attention, sort of the light of day on this one issue. It gives them sort of a final day in court. It follows the historic precedents which have been accepted by the Congress over a period of years, and gives one more opportunity for the bargaining process to work. If that independent issue could not be resolved, we would go to the Emergency Board's recommendations.

Mr. HOPKINS. Senator, that would be far better, in my judgment, than other alternatives that have been suggested today. I do not want to belabor some things that I have already said but I do think it would be far better to implement now, because we have had just intensive, exhaustive mediation, and there would not be the prospect of settlement during that 10-day period. We are down to a single issue, and we cannot compromise our position. We have spent enough time with the BLE, and I do not say this because they are not honorable people, they are. We know them very well. I have no reason to think that they are not at a bottom line from their standpoint, too, so I just cannot see any way that 10 more days would change the situation.

The CHAIRMAN. Senator Randolph?

Senator RANDOLPH. Mr. Hopkins, you have used the words "intensive" and "exhaustive" mediation. For the record, how many days or hours, over what period of time has that gone on?

Mr. HOPKINS. Well, this most recent mediation began last Friday. We have been so isolated from the rest of the world that I lose my orientation sometimes, but it is that number of days. We started last Friday and have not let up since, until yesterday afternoon.

Of course, you are presented with a problem, and I know it is a very difficult one and one you would certainly rather not have here, but the fact is that out of all the processes which have gone

before and all the effort which has been devoted to the matter before, we have on a tentative basis resolved all the issues but this one. Therefore, it is not as though there is nothing to show for all the effort which has been given, but it is a fact, a sad fact—a fact nevertheless—that this one issue has proven intractable and there is no reason to think it will not remain so.

Senator RANDOLPH. Mr. Chairman, that is why he is here and that is why everyone else is here. Is that correct?

Mr. HOPKINS. Yes, sir.

Senator RANDOLPH. Thank you.

The CHAIRMAN. Mr. Hopkins, during the period provided in the joint resolution to preclude strikes until 1984, would the railroad industry and the BLE actually be negotiating over pay differentials or would the parties be waiting on the results of the study commission? Would you continue to negotiate or would you just wait?

Mr. HOPKINS. I cannot speak for an individual railroad because negotiations would be on an individual railroad basis. The study commission would be at the national level.

I would not want to be misleading and predict a settlement of those BLE notices, but I would not, either, want to predict that there would not be settlements.

The CHAIRMAN. You are willing to continue to negotiate?

Mr. HOPKINS. Yes, indeed, on an individual railroad basis, which is what they are proposing.

The CHAIRMAN. Here is what we are going to do. We have a vote coming up. I understand Mr. Hardin and Mr. Sytsma are both still testifying at the House side. What I would like to do is to recess until 3:30. We would like you to stay around, if you can, throughout these proceedings so that if we need to ask you any further questions we can.

Mr. HOPKINS. All right.

The CHAIRMAN. With that, we will recess until 3:30.

[Recess taken.]

The CHAIRMAN. We will reconvene the committee and call Mr. Fred Hardin, chairman, Railway Labor Executives Association, and any of his associates who care to join him.

Mr. Hardin, we are very grateful to see you before the committee today. We welcome you and your associates, many of whom I know. We are happy to have you here and we look forward to hearing what you have to say.

STATEMENT OF FRED HARDIN, CHAIRMAN, RAILWAY LABOR EXECUTIVES ASSOCIATION, ACCOMPANIED BY J. R. SNYDER, NATIONAL LEGISLATIVE DIRECTOR; H. E. NELSON, DIRECTOR, RESEARCH AND SCHEDULES; AND R. L. HART, GENERAL COUNSEL

Mr. HARDIN. Thank you, Mr. Chairman and honorable members of the committee.

With me today I have Jim Snyder. I think everybody knows Jim. Harold Nelson is from my Cleveland office. My counsel is Robert Hart.

This is a rather unique position for me. I am not a party of interest other than in this dispute which precipitated this strike, but I

was summoned here last night. I was told last night to be here because my union has a vital interest in this.

I guess the best thing for me to do is just, briefly as I can, bring you up to date on the situation which faces us.

We served notices in January 1981 and started negotiating. At that time the engineers, the BLE, were negotiating with us, which we have done several times. We are the two operating groups. We represent all of the ground people. Incidentally, we have about 12,000 engineers, so we negotiated jointly for several months.

Along in November the non-ops, the employees who do not operate the trains, the engines, and the yards, they made a settlement.

Then in November, the mediation board split the engineers away from us and we negotiated separately from that time on.

We both were told countless times by the NLRC, Mr. Hopkins and the Nation's railroads, that the pattern had been set by the non-ops and, as far as the money was concerned, and so forth, they never did intend to break it. Of course, we didn't think the money was right. We didn't think the COLA was consistent with the pattern we had before. Nevertheless, we negotiated in good faith.

Finally, in July it reached the point where an impasse had arrived. The chairman of the mediation board proffered arbitration, and broke off.

Of course, then the engineers set a national strike date which resulted in President Reagan's appointing Presidential Emergency Board No. 194 to hear that dispute. That eliminated any possibility of a railroad strike.

Inasmuch as we were only about 3 days behind them in the mediation process, I agreed to take our dispute to the same board for expediency, economy, and various other reasons.

We had two separate boards but the three board members were the same. We would meet one day and the carriers another. All the board meetings were held within a span of a week or so.

After the board made its recommendations, and of course during the proceedings before the board which we have been in several times, I have handled our negotiations for about 10 or 12 years, and we have been in several of them, I think Dr. Arnold Weber, president of the University of Colorado, was the chairman, and Dr. D. Quinn Mills from Harvard and Dr. Jacob Seidenberg.

It was a very courteous board and operated in a very timely fashion. In fact, on the first five items I thought they were extremely good. However, on the other two I didn't think they did too good a job.

Nevertheless, after the board concluded and made its recommendations, we went back in and started to discuss what we thought the board meant.

After 4 or 5 weeks of that, about 10 days ago, I made an agreement. I had a far more serious problem than the engineers did because, first thing, the wage pattern, the carriers were very adamant they would not break the wage pattern. We were going to get the same percentage increase and the same COLA application that the non-ops had already settled for. Therefore, we more or less gave up on that.

Then the railroads wanted us to hold down any wage increase, COLA or wage increase, on arbitrators' special allowances, which

are negotiated agreements with different railroads, different geography, and different methods of operating. We have many of them. Therefore, we would not agree to that.

The board recommended that we take the pattern settlement, the percentage increases, the same COLA application, and that there be no hold down, that we get the wage increase retroactive to April 1, 1981, and that it be applicable to all of our earnings.

However, then the board recommended that the question of basis of pay and the question of engineer differentials and the things that were in dispute go to a study committee. We agreed to a neutral to study them and report on or before December 1, 1983.

Neither the carriers nor we would be able to strike or take any action before January 1, 1984, not to become effective before July, which was the end of the moratorium period.

The cabooses situation was by far the most serious one. Of course, it involved us only. The carriers wanted to eliminate all cabooses. They said they are costly and they don't need them. Of course, due to Federal regulations and State laws and hundreds of operating rules, we think that cabooses are quite a necessity on most trains. We know that on some switches and industrial engines at work plants and short runs that cabooses can be eliminated. We were willing to do that, but the board saw it differently and mandated that we negotiate on each property but that, if negotiations fail, we arbitrate the elimination of a certain number of cabooses.

After considering all those things, we made up our minds that we were going to proceed with that, that it would recognize collective bargaining and we would carry it back to each individual property. Then the question of the moratorium came up.

Historically in the railroad industry, as I said, I have handed negotiations for a good many years, and there has been a moratorium on items that cost money, such as wage increases. The railroads always argue that they have to know their budget and how much the wages are going to be for a given period of time.

I have to be honest. The existence of a moratorium in a railroad collective-bargaining agreement is nothing unusual. In fact, it is the usual thing. You cannot serve notices for more money or change the rates of pay during that moratorium period.

There have been things left out that were not covered by the moratorium but they did not involve money.

After carefully negotiating for about 3 or 4 weeks, we decided that we would be better off to follow the recommendations of the Emergency Board and make a settlement and include a moratorium which did have a no-strike clause on it for anything that involved money or this so-called leapfrog, whatever they wanted to call it, through June 1984.

During the proceedings of the Emergency Board, we talked at great length about moratoriums and whatnot. We knew that the moratorium they were recommending for us was identical to the one they were recommending for the engineers. We decided then that under the Railway Labor Act, if we did not make an agreement, the only place that it would come to be resolved was here, to the Congress. We did not feel that coming to the Congress over a moratorium provision about whether or not we can strike or can we strike every 60 days or so—we did not think that was a consist-

ent enough argument. We had settled everything else, so we made the agreement. It is now scheduled to go out for ratification.

Then when the BLE concluded its negotiations in the last 5 or 6 days, they did not see eye to eye with us on that. They are insisting that they be left outside the moratorium, free to strike on this so-called lonesome pay.

Where my union came into it is this: If they have a different moratorium or they have a right to strike or they get additional moneys out of higher productivity or out of any source, then our agreement cannot be ratified. There is no way in the world it can be ratified.

Our interest is that we must be protected just the same as the engineers. I do not know whether anybody explained to you, the various witnesses on the House side, the so-called leapfrog thing. It involves lonesome pay.

In 1964—some of the members here remember it well—there was a great campaign to eliminate firemen off all trains. Firemen were eliminated. Firemen at that time belonged to a separate union called the Brotherhood of Locomotive Firemen and Enginemen.

As the firemen were eliminated, the engineers made a national agreement getting a dollar and a half a day additional pay for working without a fireman. They got that until 1969. In 1969 they increased that lonesome pay, as we call it, to \$4 per 100 miles, \$6 for 150, whatever. It was a minimum of \$4.

We did not share any whatsoever because one arbitration panel—we never had a strike or anything—said that the elimination of a fireman, it was our duty to be in place to give the proper signals to an engineer, so we had no right to demand that.

Then in 1970's the railroads entered into national agreements with us to eliminate one brakeman from the ground crew. We made voluntary agreements. We have them with all the major railroads except two. We have one agreement in place. I think that will go into effect in another month or two. That is for one railroad. That only leaves one major railroad.

In our elimination of one brakeman through attrition, we took the \$4 and the railroads agreed to give us at the end of the year in a productivity fund a sharing of so much each day you worked. They agreed to share the increased productivity and the pay with us.

We have not realized much out of that because the railroads have—we have right now 31,000 members furloughed. The whole railroad industry is very greatly depressed due to steel and other heavy industries. Therefore, our people are not getting anything much out of the productivity sharing because there is not much there.

However, the engineers then served notices that they wanted another \$10.75 a day or something in that ball park for working with one less brakeman. That is the situation. In the moratorium they want the right to pursue those notices on the individual railroads with the right to strike to get another \$10 or \$12 when they are working with one less brakeman.

Of course, we cannot live without the same right. If they are going to serve notices, then we have to serve notice that we are entitled to something for working without a fireman or a conductor,

working without a brakeman, anything. There are so many different aspects to it that the politics of unionism require you to pursue.

We entered into the agreement that was entirely consistent with the recommendation of the Emergency Board, thinking and knowing that the moratorium provision would be identical to the BLE.

It has been stated over at the other hearing that there is a dispute between our union and the BLE. That is not true. We do not have a dispute with them at all. We have a dispute with the carriers, and the carriers have a dispute with them, but we could not reconcile it ourselves.

It is very obvious that if the engineers have a different moratorium where they are free to strike and I don't, then I won't have any members. They will all go to the engineers or go somewhere else. I am opposed to that very violently.

Then the chairman over there said, "You have an agreement that you have made and signed and it is going to be sent out Monday. Do you think it will be ratified?"

I said, "Well, I have to correct you. It is not going to be sent out Monday. I won't get around to sending it. I am going to be real busy. I doubt if I send it out any time soon. But if I sent it out, it would not be ratified until this thing is put to rest."

I was accused of proposing all kinds of legislation. I propose none. I was just invited to come. That is our situation. I am very sorry that it worked out that way.

The CHAIRMAN. Mr. Hardin, we are happy to have you here and have your recitation.

You and your distinguished colleagues on the RLEA represent the rank and file. Speaking as RLEA chairman, do you view the President's proposal as against the interests of the rank-and-file employees generally or do you feel that it is a reasonable proposal?

Mr. HARDIN. Mr. Chairman, being a labor union president, the right-to-strike is the only weapon that we have left. It is not very beneficial anymore.

I certainly can sympathize with the president of the BLE not wanting anybody to legislate away his right to strike. I would not want it if it were legislated on me.

In this situation I have to be honest. If the agreement is forced on him, then I have no problem because I already have agreed to the identical thing. However, if it can be resolved some other way—

The CHAIRMAN. You do not consider President Reagan's proposal to be against the rank-and-file employees generally?

Mr. HARDIN. I did not understand the question.

The CHAIRMAN. Under these circumstances where you have an agreement and you feel bound by it as long as this problem with the BLE is faced and resolved, the only way to resolve it in your opinion—I am asking you—is the only way to resolve it what the President has suggested here, that we are going to have to have this resolution passed by both Houses of Congress?

Mr. HARDIN. I truthfully do not know. I know that if the Congress passed a resolution that became law, that would resolve it. However, as I say, I am a union president and I spent my life in labor. I am reluctant to support or propose a law that would take away the right to strike. In this particular instance I think it is a

minimal thing. I saw fit to sign an agreement rather than to attempt to strike over it.

The CHAIRMAN. In other words, you cannot say the words but you already have agreed to that up to 1984, assuming the BLE problem can be resolved by this resolution or otherwise, it would be at least a resolution that would be compatible with what you would like to see?

Mr. HARDIN. Well, I can't send out my agreement because it will not be ratified if we do not have the same type moratorium and the issue is not resolved some way or another. I cannot in good conscience propose a law that would eliminate the Brotherhood of Locomotive Engineers' right to strike.

The CHAIRMAN. Let me put it another way. Do you view the President's proposal as undercutting the collective-bargaining process or as something that is necessary in order to get the railroads back on the track?

Mr. HARDIN. I have to answer that this way: If it affected me, I would view it entirely differently, being I am a human being. If it were I who was wanting to strike, I would be very violent opposed to it. Inasmuch as it is somebody else, I am going to let them make the complaints about it.

The CHAIRMAN. In the past, Congress has merely extended the cooling-off period for a period of days or weeks. The present proposal seems to go beyond a simple extension. Do you think the implementation of the Emergency Board's August 19 report and recommendations is warranted here as opposed to a simple extension under these circumstances?

Mr. HARDIN. I cannot answer that, Mr. Chairman. I don't know. I think certainly there are other means for resolving it. I would hope it can be resolved some other way, or maybe voluntarily doing that. However, I cannot say that that is the only way.

The CHAIRMAN. Would it be fair to say that if we passed this resolution recommended by the President and by the Secretary of Transportation that that would resolve the issue as far as you are concerned?

Mr. HARDIN. The way the facts are, certainly, because it would make their agreement identical with the one that I already have voluntarily agreed to.

The CHAIRMAN. It would put the railroads back on the track really today if both Houses pass it? Is that correct?

Mr. HARDIN. I would presume it would.

The CHAIRMAN. I have never known a railroad union leader who was not willing to follow the resolution of Congress on this issue.

Mr. HARDIN. Oh, no, I know my union would; I am sure John Sytsma would.

The CHAIRMAN. That has been my impression.

Let's turn to Senator Randolph.

Senator RANDOLPH. We have been counseling with people from West Virginia. I am a West Virginia Senator.

As you know, that State moves its products from the mines, the factories, and the fields by railroad. That is the carrier whether it is the Chessie system, Norfolk & Western, or other railroads that form a network through our hills and valleys.

This sort of a strike, if it were to occur, would be devastating, Mr. Hardin, to our already depressed economy.

Someone might say that perhaps I talk too much about the situation in West Virginia, but I do it only to have the record reflect the process by which we on the Hill, working with information that you bring to us, are able to put into motion a type of action, congressional in nature, which will not be one of bias but one which will be realistic in an effort to keep America's wheels turning because we are a nation of wheels and wings.

Do you feel that there has been good faith on your part and on the part of others who have been conferring even though disagreement naturally surfaced during this period of consideration, possibly averting a strike but now it is impossible? Is that true? A strike is in being? Is that right?

Mr. HARDIN. Senator, I made an agreement. I made a voluntary agreement to keep from having to strike. If I had not made the agreement, I would either have to strike, and if I strike, I knew that it would come here to Congress to be settled. Under the Railroad Labor Act, you do not go back to an emergency board. You cannot have two. Truthfully, because I have to be honest, I did not think that the dispute warranted a national railroad strike in the great shape that the country is in today.

Particularly in my union we have 31,000 railroad men furloughed with over 15 years of service. Therefore, I did not. However, Mr. Sytsma of the BLE, the president, he may look at it entirely different. He may think that it is a matter of principle and that the principle is more involved than the minute details.

However, I will agree with you wholeheartedly that a strike in any industry should be averted if it possibly can be. You know yourself that in the railroad industry we do not have many strikes. There are very, very few. Usually we are able to work them out.

Senator RANDOLPH. How many years has it been since a general rail strike?

Mr. HARDIN. Since we had a strike? We had a small strike in 1971 and in 1954; 1969. I know one time President Johnson in 1963 or 1964 put his in the basement of the White House and told us we didn't eat until we made an agreement, but we ate the next meal.

Somebody asked the other day, "What kind of legislation would you propose." I would propose the kind that President Johnson gave us. That is to give us the money and then we will just continue to talk and there will not be any strike. We do need the money. We waited since April 1, 1981.

Senator RANDOLPH. This is not extraneous. I take the occasion to say to Senator Kennedy that his brothers, Jack and Bob, served on this committee, as he serves on it, and there has been continuity on our committee with the service of these three brothers. In a factual sense they have had to come to grips with these matters. I remember it very well from the past, including President Johnson.

I just hope that what we do here will not be indicative of a desire to injure anyone, but to preserve the country at this present time and yet understand the equities which are involved.

Thank you.

The CHAIRMAN. Senator Kennedy?

Senator KENNEDY. Thank you very much, Mr. Chairman.

Do you have any sense or feeling as to whether your agreement in any way would be affected if there were additional time given to see if there could be some mediation worked out with the engineers and the carriers? If there were a given period of time—say that you did not send out those notices for 10 days or 20 days—can you give us any feeling if it would affect the outcome of whether your union members would support you or not? Would it make it more difficult? Would it make any difference? What can you tell us about that issue?

Mr. HARDIN. Senator, I would say a week or 10 days or so, I could handle that very easily. However, you have to remember that if there is a drastic change made in that other agreement during that 10-day interval and they are allowed more flexibility and latitude in striking which we do not have, then mine would be scrapped. I would have to start back negotiating again. A slight delay of a few days certainly would not affect mine. I am perfectly willing to cooperate in any way I can.

Senator KENNEDY. I know you cannot look into a magic ball. However, given your understanding of the nature of those negotiations which have taken place with the board in the past, do you believe that if there was a period of time, 10 days or so, that was available for mediation—what would be your sense as to the outcome, given the position of the parties? Is there any way you could give any indication?

Mr. HARDIN. I truthfully cannot say because we have split since December and I have not been in there negotiating with them. I know in negotiations I have been in oftentimes some little suggestion or some proposal can precipitate some action and agreement can be reached when you thought it was impossible the day before. However, I really do not know how much each side has dug in on this question between the carriers and the BLE.

Senator KENNEDY. Is it your testimony that if there was mediation and there was any alteration or any change with the engineers that it would endanger or basically make it impossible for you to ratify your agreement?

Mr. HARDIN. It absolutely would.

Senator KENNEDY. Any change at all?

Mr. HARDIN. Any change in the area in which they are in dispute of substance would absolutely necessitate my renegotiating.

Senator KENNEDY. This is important.

Mr. HARDIN. We are violently opposed to their getting high productivity. We are not opposed to their wanting it, but we are opposed to their getting it. [Laughter.]

Senator KENNEDY. That is familiar on a lot of issues.

That position is very important. At the risk of repeating myself, I want to make it very clear.

As I understand your position, you are prepared to wait for 10 days before sending out the request for the ratification. However, my understanding is that if, as a result of mediation, and even if it should be in good faith mediation, if there should be any alteration, adjustment, or change of any nature on this one single issue which is in dispute, your feeling is that you would have to say your agreement would be off?

Mr. HARDIN. If there were any substantive change in the area in which they are in dispute—

Senator KENNEDY. That is the only area basically.

Mr. HARDIN. That is what they tell me—that that is the only area of dispute. If there is any substantive change, then I would expect the same treatment from the carriers. I would expect the same right or the same liberalization. That would not be unreasonable.

The CHAIRMAN. That means opening up the whole negotiation.

Mr. HARDIN. The carriers might decide to give them, as did the miners, \$500 each to ratify or something like that. We certainly would expect it. All we want is equal treatment.

Senator KENNEDY. If you went back to negotiations, that would open up the prospects or the possibilities of a strike? Would it?

Mr. HARDIN. Certainly. I reluctantly say that. I would have no alternative but to exercise whatever weapon we had. If they were treated differently than we were treated, then I would have to reopen my negotiations. Of course, reopening them is not the worst thing in the world. I think I overlooked a couple things in that elimination of cabooses that I would like to argue about again.

They had a wreck out there last night with a superintendent running a train. He ran into the rear of a train that did not have a caboose. I think it would help me now.

We are perfectly content with the agreement we made unless circumstances require us to change it.

Senator RANDOLPH. Mr. Hardin, did you ever ride a caboose from West Virginia to Baltimore or Jersey City?

Mr. HARDIN. No, sir, I never did. I was in South Carolina and Georgia. I came up there and settled a lot of labor disputes, though. We had a lot of labor disputes in West Virginia, but I did my railroading in South Carolina and Georgia.

Senator RANDOLPH. I have ridden the caboose over at the B&O behind the cattle or lamb trains going into the markets of Baltimore and Jersey City. It is not the most comfortable place.

Mr. HARDIN. You have to be prepared and be in the right position. Ours is a very dangerous vocation; there is no doubt about it.

Senator KENNEDY. May I just finish this point?

Have you been willing to agree to have this issue of the disparity submitted to the study commission? Has that been your position, as recommended by the Emergency Board?

Mr. HARDIN. It is in the study commission to which I have agreed. I understand it is in the agreement that the engineers have agreed to. I don't know about that. However, they are not willing to accept a moratorium on it. It is precisely and specifically in the study commission. The chairman of the study commission is to make a written recommendation on it on or before December 1983. After that time, it can be moved on by either side.

The CHAIRMAN. Senator Metzenbaum?

Senator METZENBAUM. Mr. Hardin, I get a clear indication that you are saying that if the shoe were on the other foot, if it were on your foot, you would not be for this legislation, and that you are not going to address yourself to it because it is somebody else's responsibility but that actually if you were involved, you would have

difficulty accepting this proposal of the administration. Is my understanding correct?

Mr. HARDIN. Senator, I may have put it crudely. Certainly I would be opposed to any legislation that took away my right to strike. What I said was I presume that the BLE feels that way about it. However, I have to be honest. If a law were passed which mandated that they accept it, they would be accepting the same thing that I voluntarily accepted. However, I am opposed to anything that takes away the right to strike.

I am not proposing any legislation other than just pass.

Senator METZENBAUM. If we passed this legislation this year, do you think it is only a matter of time until we pass legislation that orders you back to work, that takes away your right to strike, and imposes a settlement on you? Once we do it, have we not set the precedent that future Congresses will look at?

I note that your statement was, if it were me who wanted to strike, I would be very violently opposed to it, but I will let somebody else speak inasmuch as it is not me.

Do I understand you correctly that if it were you, then you would be very violently opposed to this legislation if the Congress or the administration were imposing a settlement on you?

Mr. HARDIN. In all probability, I would. However, different unions approach it differently. You are familiar with our union. We have never had a national strike. Instead of creating a national emergency, we just have a selective strike and just pick one, two, or three railroads and not tie up the country.

Senator METZENBAUM. I believe I have had the privilege of representing your union.

Mr. HARDIN. That is right, and did a very good job.

Senator METZENBAUM. I would say that both these major unions, I am proud to say, Mr. Chairman, are headquartered in my own city. That indicates the great good judgment that they have.

The CHAIRMAN. We are going to watch the way you vote on this. [Laughter.]

Mr. HARDIN. I would like to summarize by saying this: I am in an embarrassing situation when you ask me if I am supporting this legislation. The truth of the matter is, and I have to admit the truth, I made a settlement that prohibits a strike until June 1984 because I thought it was in the best interest of my members due to the economy of the country and whatnot. I made that settlement, and I may have made a mistake, but I made it and I would make it again tomorrow. I did not think the issue was big enough to have a railroad strike over.

However, if I were in Mr. Sytsma's place, I would be adverse and very reluctant to agree to legislation that would eliminate my right to strike.

Senator METZENBAUM. I think it is a very fair statement. I commend you on it.

I am concerned, as are several other members of this committee who have expressed themselves publicly, specifically the Senator from Oklahoma, Senator Nickles, and the Senator from Indiana, Senator Quayle, about Congress imposing a settlement in a labor dispute.

I have broached the subject in my opening statement this morning. I want to return to it now. That is the possibility of arbitrating the issues. There are two kinds of arbitration. One is compulsory arbitration where the Government orders somebody to arbitrate, and the other is voluntary arbitration.

Although I have asked Mr. Sytsma previously when I spoke with him, I will ask him as to whether they would be willing to voluntarily arbitrate this matter. I have asked Mr. Hopkins. As you well know, you and I have had some discussions on the subject. However, I wonder if I may ask you at this time: Would you be willing to voluntarily arbitrate the issues in this matter?

Mr. HARDIN. Yes, sir, I would be willing to arbitrate the specific items that are in dispute now in an orderly fashion. It cannot be arbitrated wholesale. You cannot arbitrate the question because there are different railroads with different operations and different geographical problems. It would have to be an arbitration of the type you would negotiate on that railroad, which we have a right to do under this agreement. We can negotiate all we want to, but there is no strike involved.

I would be willing to negotiate on a railroad. If a negotiated settlement was not reached, I would agree to arbitrate that particular dispute. For this period of time, I would insist that I get to operate four railroads while I was in mediation. If voluntary arbitration is the answer, I would agree to it, but I would sincerely ask that my four be arbitrated first because they are of longstanding.

Senator METZENBAUM. If you arbitrated it, it implies with it that you would abide by the arbitrator's decision and that if the arbitrator's decision were unsatisfactory, there would not be a strike? If it were satisfactory or unsatisfactory, there would not be a strike? Am I correct?

Mr. HARDIN. That is a normal voluntary arbitration. Sure, there would not be any strike provision in it.

Senator METZENBAUM. You are saying there would be several different arbitrations. How many would you suggest in numbers throughout the country?

Mr. HARDIN. I have four. I imagine that the engineers probably have in the next 6 or 8 months six or eight, but it would be a local and simple matter.

Senator METZENBAUM. And each one would be on an individual basis?

Mr. HARDIN. Yes.

Senator METZENBAUM. Individual railroad basis?

Mr. HARDIN. That is right, because each railroad operates differently; the geography is different.

Senator METZENBAUM. Do you think if we could get the carriers and the BLE to agree that this matter would be promptly resolved and the railroads back working very shortly?

Mr. HARDIN. Well, you have the main one, you have me, already agreeing. If you just get the other two, you have no problem.

Senator METZENBAUM. All right. I am with you.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. Hardin, we appreciate your taking time to be with us today. We have one final witness. We would like you to stay around if you

can, and your colleagues as well. We have one final witness, Mr. John Sytsma.

I am not sure that he is through over at the House hearing as yet. Does anybody know?

Mr. HARDIN. They recessed for 30 minutes. He was next after me. Maybe they recessed for longer.

The CHAIRMAN. I understand he is still testifying.

[Off the record.]

Senator KENNEDY. What is your recommendation that we do?

Mr. HARDIN. In truth, I don't have one, Senator. I don't have a recommendation because I don't know the real status or the sincerity of the negotiations. I am in the position of having already made an agreement.

The CHAIRMAN. I take it you are concerned about the same problems that everybody here on this committee is concerned about, the problems happening in America as a result of this strike.

Mr. HARDIN. Truthfully, I think if we are going to resolve it in one of a half dozen different ways, we ought to go back to work. The railroad industry should go back to work tonight if there is some way to resolve it.

Senator KENNEDY. What is the current situation, as you understand it, in terms of your membership? Are they going to go back to work tomorrow, tonight, or what is the situation?

Mr. HARDIN. Our people are only honoring the engineers' picket line. We are not out on strike whatsoever. Some may not be honoring it; I don't know. It is each man's individual choice. Historically, railroad people honor another railroad union's picket line. Our people certainly are anxious to get back to work if they just take down the picket line. I am sure that all others are, too.

The CHAIRMAN. Let's recess for 15 minutes, or at least until Mr. Sytsma appears.

[Recess taken.]

The CHAIRMAN. Gentlemen, we are glad to welcome you here.

We are interested in hearing your side of this issue. Of course, as president of the Brotherhood of Locomotive Engineers, we appreciate having you in our committee room. I will turn the time over to you.

STATEMENT OF JOHN F. SYTSMA, PRESIDENT, BROTHERHOOD OF LOCOMOTIVE ENGINEERS, ACCOMPANIED BY WILLIAM J. WANKE, FIRST VICE PRESIDENT; E. L. McCULLOUGH, VICE PRESIDENT AND NATIONAL LEGISLATIVE REPRESENTATIVE; VIRGIL F. DAVIS, BLE DIRECTOR OF WAGES AND SCHEDULES; HAROLD A. ROSS, GENERAL COUNSEL; AND THOMAS R. ROTH, LABOR RELATIONS CONSULTANT

Mr. SYTSMA. Thank you, Senator Hatch.

The CHAIRMAN. If you could summarize your statement, we would appreciate it. We will put your statement in its entirety into the record as though fully delivered following your oral presentation.

Mr. SYTSMA. I appreciate that, too. Even in summarization, my statement is rather lengthy because this is a very complex issue.

My name is John F. Sytsma. I am the international president of the 40,000-member Brotherhood of Locomotive Engineers. We were

founded in 1863. We represent over 98 percent of the locomotive engineers in the United States and Canada.

With me here today are William J. Wanke, first vice president of the Brotherhood and our chief negotiator; E. L. McCullouch, our vice president and national legislative representative; Virgil F. Davis, BLE director of wages and schedules; Harold A. Ross, our general counsel; and Mr. Thomas R. Roth, labor relations consultant.

Today 26,000 of our members are on strike on an issue vital not only to all locomotive engineers but also to all Americans who work for a living. Although we are seeking to uphold the principle that the highest skilled and most responsible worker shall receive equal pay or pay equal to those responsibilities and skills through the maintenance of the engineers' existing wage differential, a principle that we feel is laudable in itself, actually we are on strike on an even loftier plane; that is, to retain the American worker's right to strike after exhausting the statutory procedures for collective bargaining and mediation.

I might add that at the hearing before the House of Representatives committee a great deal was made of the fact that this might be a dispute between two unions, a jurisdictional dispute between the UTU and the BLE. Actually, that is not the case.

At the present time there are hundreds, and possibly thousands, of UTU members who are out there on the picket lines on the railroads of the Nation supporting and assisting the BLE in the conduct of our strike.

In 1934, the Congress passed the version of the Railway Labor Act as we in the industry know it today. This act contains a comprehensive scheme for service of notices, negotiations, mediation, proffers of arbitration, cooling off periods, and the Emergency Boards in disputes that may disrupt a significant portion of the Nation's commerce. The act contains a detailed system of arbitration to adjust controversies between railway labor and the rail carriers as to the interpretation and application of collective-bargaining agreements.

In consideration of labor's acceptance of this complex scheme of labor relations, the act guaranteed railroad employees the right to strike, a right afforded to all other American workers in the private sector.

Congress now has been asked to breach that covenant made with labor in 1934 by passing legislation that will place the report of Emergency Board No. 194 in effect as the "bargained agreement" between the parties.

Not only would this covenant be breached if this legislation is passed, but the Railway Labor Act will be disemboweled. The act imposes pressures upon both parties to reach agreements. With minor exceptions, the procedures of the act have worked over some 50 years. These influences will be eliminated if this ad hoc legislation is passed. If, as here, one side knows that legislation will be passed that will decide the controversy in its favor, any impetus or influence upon it to reach an agreement in collective bargaining will be removed. In this case, all circumstances establish that the railroads have never had any intention to reach an agreement in good faith with the Brotherhood of Locomotive Engineers.

These facts show that the railroads had the specific idea of forcing this dispute to the Congress. We are confident, however, that the Congress will recognize the significance and equity of our position.

As I have indicated, this organization has acted lawfully and responsibly from the inception of this dispute in January 1981. The BLE is one of the oldest labor organizations in the world with a known record for being cooperative and law abiding. Our record proves our interest in the health of the industry. However, this cooperation on our part has been taken by railroad management as a weakness and has led us to be shortchanged by the carriers. They have sought givebacks and takeaways from the locomotive engineers to pay for those giveaways to other unions and for their deficiencies in management.

About January 26, 1981, BLE served a notice on those railroads represented by the National Carriers Conference Committee for increases in rates of pay and terms of compensation, and on February 2, 1981, for modifications of health and welfare benefits. On February 5, 1981, the carriers served needless retaliatory counter-proposals to eliminate all of our rates of pay, rules and working conditions.

By reason of the preparation of railroad retirement legislation and the hearings on those statutory amendments, the initial conference with the National Carriers Conference Committee did not take place until April 30, 1981. At that meeting, the parties explored the nature of the notices. BLE's representatives were unable to determine the specifics of the carrier's notice.

As the carrier representatives have often said, they are not certain as to what they are actually seeking. There must be factors built into the pay structure to insure that the trains will get over the road as fast as possible and thereby maximize service and minimize penalty wage payments.

Over the years, locomotive engineers represented by this organization have contributed to the financial health of the railroad industry in many ways. Most of these accommodations have been accomplished through the process of collective bargaining, as they should be. Our willingness and ability to cope with these problems to the mutual interest of the industry and the employees we represent is indeed worthy of note.

In fact, two of the last four national agreements entered into between the Brotherhood and the railroads represented by the National Railway Labor Conference contain major concessions to the railroads in response to their alleged need for greater productivity and efficiency.

All four national agreements were reached in direct negotiations between the parties appearing before this Board. These modifications were in response by us to carrier proposals similar to, if not identical with, many of those advanced by the carriers in this present case.

The job and tasks of the locomotive engineer never have been routine, monotonous, or unchallenging. The job has always been quite the opposite and has become increasingly so in terms of greater responsibility and the variety and number of tasks that we perform.

While locomotive engineers are being cast in the light of creating problems for the railroad industry, that charge is certainly not true. We again are being asked to compensate for and to offset the shortcomings of management and downright mismanagement contributing to higher administration of labor costs.

As I indicated previously, issues relating to the railroad retirement system seemed to take priority, resulting in considerable delay in scheduling further conferences after April 30, 1981. It was not until August 27 and 28, 1981, that the parties resumed negotiations. Additional meetings were held on September 14, October 5, and 20, 1981. The conferences continued on November 10, 1981, at which time it was announced that the NRLC had reached a tentative agreement with some of the nonoperating railway labor organizations.

As a result of subsequent events, it is quite clear that the carriers' negotiators intentionally derailed the bargaining negotiations with the operating organizations to obtain this agreement—that is, with both the BLE and UTU—in order to argue that a pattern had been established setting an alleged ceiling on the considerations available to the employees in the operating crews, even though extensive givebacks were being demanded by the railroads.

Conferences continued on November 17, 1981, and at the close of this meeting the parties tentatively scheduled further meetings.

However, on November 25, 1981, the carriers, without advance notice to us, invoked the services of the National Mediation Board and that Board assumed jurisdiction and docketed this case as A-10872 on the same date. Mediation sessions were held on December 1 and 7, 1981; January 12, 13, 25, 26, and 27; February 24; April 7 and 8; May 20, 26, and 27, 1982, with little accord being reached.

Actually, the carriers did not—I emphasize “did not”—submit a definitive, complete proposal to the organization until the May 20, 1982, conference. On the other hand, BLE gave the carriers complete proposals both before and after May 20 with suggested resolutions that could serve as a basis of settlement of this dispute.

At the May 26th meeting, representatives of the National Mediation Board advised both parties that in its view its efforts had been unsuccessful and that it was going to extend a proffer of arbitration. The Board did ask the parties to think the situation over and to come back on May 27 to determine if anyone had figured out a means by which the impasse might be broken.

On that date, the NRLC's chief negotiator, Charles I. Hopkins, Jr., reaffirmed to the Board that its singular proposal of May 20, 1982, was the sole basis upon which the NRLC would enter into a settlement with the employees represented by BLE.

On June 10, 1982, the National Mediation Board notified the parties that its services had been terminated except as provided in section 5, Third, and section 10 of the Railway Labor Act.

In light of the recalcitrance of the NRLC to bargain in good faith upon the subject matters of the dispute, I sent several informational circulars to BLE's membership, and eventually an official circular and strike ballot.

By exercise of their democratic rights, BLE's membership overwhelmingly established that they would strike to obtain a fair and reasonable resolution of the dispute, one in which they would not

be asked to take less than the settlement granted to the nonoperating employee organizations and, nevertheless, be required to give up their current wage structure and to grant extensive rule changes.

Therefore, on June 30, 1982, the BLE informed the National Mediation Board that it intended to strike those railroad parties to the dispute on July 11, 1982.

On July 8, 1982, the President of the United States notified the organization by telegram that he had created an emergency board under the provisions of section 10 of the Railway Labor Act. Executive Order 12370 established this Board as Emergency Board No. 194. The members of the Board were Arnold Weber, president of the University of Colorado; D. Quinn Mills, a professor of the School of Business, Harvard University; and Jacob Seidenberg, an arbitrator.

At the request of the administration and the Emergency Board during its organizational meeting with the parties at Chicago's O'Hare Airport on July 15, 1982, which was attended by two members of the Board, we agreed to grant the Board an additional 10 days or until August 19, 1982, in which to hear the dispute and to present its report to the President.

This Board was then reappointed as Emergency Board No. 195 to hear the outstanding dispute between the NRLC and the employees represented by the United Transportation Union.

The BLE was granted 2 days by the Emergency Board, July 20 and 21, in which to present its case in chief to the Board. This proceeding started at 10 a.m. Mr. Weber and Mr. Seidenberg were in attendance. Mr. Seidenberg was ill. Professor Mills did not arrive until midafternoon of the first day, after presentation of our opening statement and the first three witnesses.

The following morning, Mr. Seidenberg left to return home due to his illness. When the hearings adjourned at 5:40 p.m. on July 21, 1982, only Dr. Weber was present. In some ways you might say that we got shortchanged a little bit on the Board.

During the 2 days allotted to us by the Emergency Board we presented evidence and expert testimony in support of each and every facet of our section 6 notices. We established that there had been a significant wage compression between the pay rates for locomotive engineers and employees of other crafts; that the agreement between the nonoperating crafts and the NRLC fell below the inflation rate and was significantly out of line with settlements in all key industries and in comparable occupations; that the cost-of-living adjustment clause in the railroad industry is substandard; that the meal allowance of \$2.75 for an away-from-home engineer is unsatisfactory; that road engineers did not receive any holidays; that vacations were inadequate; that the lack of sick leave and long-term disability benefits is unconscionable; and that the present hospital, medical, surgical, and other health and welfare insurance benefits were totally inadequate and significantly below the benefits provided to most of organized labor and Government employees.

The carriers presented their case to the Emergency Board on July 26, 1982, and for a short period on July 27. Cleverly—I dislike to use the term “fabricating” but it seems to be the appropriate

term—cleverly fabricating the issues before the Board, Mr. Hopkins and the NRLC took the position that all issues between the carriers and BLE had been resolved except for two matters.

By reason of the nonoperating crafts agreement, which Mr. Hopkins contended set a pattern that had to be imposed upon locomotive engineers, he asserted that there were three outstanding issues, two of which were applicable to BLE.

He urged that the Board recommend: One, the appointment of a productivity commission with the power to study proposals advanced by the railroads, including the basis of pay, elimination of arbitraries, work rules that provide for a division of work between road and yard service engineers, and so on, plus any proposals advanced by BLE, on which the commission could make final and binding decisions—in other words, act as an arbitrator; two, a freeze on pay increases to the mileage rate of engineers, arbitraries, and special allowances; and, three, elimination of the cabooses in which the road conductor and rear brakeman ride, which issue, of course, is not applicable to the BLE.

The issue of a holddown or freeze on pay increases to our mileage rates and other elements of compensation had not been pressed or discussed by Mr. Hopkins with us until the parties were in mediation.

Notwithstanding the duties placed upon it by section 10 of the Railway Labor Act, the Emergency Board saw itself as an adjunct of the bargaining process. Accepting the railroads' views, the Board ignored our presentation and only considered the items that the railroads considered important. Thus, the Board recommended at the outset that the BLE accept the nonoperating settlement; that is, an 11-percent increase over a 39-month period, plus possible cost-of-living, and a moratorium on the services and progression of notices during this period. The Board did impose the increases on all elements of compensation.

The Board also did accept the carriers' concept of a study commission. The Board, however, rejected a study commission approach embracing final and binding arbitration. Rather, the Board proposed a highly structured commission that would not complete its work until December 1, 1983.

During this period and until July 1, 1984, the Board recommended that a complete moratorium be imposed on the BLE, which restructured the BLE from progressing, among other things, any notices it might have served seeking the maintenance of wage differentials where the other members of the crew obtained additional compensation during the period of the agreement.

At the time that the BLE and the carriers executed the March 6, 1975, national agreement, they signed a side letter which stated that the moratorium provision of that agreement was not applicable to pending or prospective notices served on individual railroads and subject to local bargaining, which sought to adjust compensation relationships between the engineer and other members of the crew. A similar exception was contained in the July 26, 1978, agreement between BLE and the NRLC. In other words, what we are seeking now has been in effect during the lifetime of two national agreements by mutual agreement with the NLRC.

For a period in excess of 7 years, this exception did not present any problem to the railroads. Over the years, BLE peacefully obtained wage differential agreements with several major railroads, including the Burlington Northern and the Missouri Pacific, and entered into one as late as June 3, 1982, with the Atchison, Topeka & Santa Fe.

Although contending that the subject of maintenance of wage differential should be covered by the moratorium, this agreement with the Santa Fe was concluded only a few days after the Mediation Board had indicated that its efforts to resolve the dispute had been unsuccessful.

It would appear that the Santa Fe, which is one of the major carriers involved in this dispute, just 3 months ago did not consider the moratorium on wage differentials to be any impediment to a national agreement with the BLE or did it view the situation of alleged leapfrogging with any concern.

Emergency Board 194's report was issued on August 19, 1982. Although the act imposes a 30-day cooling-off period after the issuance of a report, Mr. Hopkins and the NRLC would meet with us on August 25 and for several hours on August 26. We did not meet again until September 13, since Mr. Hopkins chose first to conclude an agreement with Mr. Hardin.

Our negotiating team then met with the NRLC from 10:35 a.m. to 1:20 p.m. and 3:10 p.m. to 5:20 p.m. on September 13. Mr. Hopkins decided that the meetings should be terminated at that time. We suggested that meetings be resumed at 8 a.m. on the following day, but he requested that we meet at 10 a.m. We met until 12:30 p.m. on September 14 and returned at 2:30 p.m.

When we left, we had understood the carriers would submit an alternative on the outstanding issues. The carriers were not prepared to resume on our return, and our committee conferred with National Mediation Board Chairman Robert Harris and Mediator Meredith for a period of approximately 30 minutes. The carriers finally came in at 3:15 p.m., at which time Mr. Hopkins advised that the carriers had no alternatives and were shocked to think that they were expected to present an alternative.

Throughout bargaining—this is a tribute to Mr. Hopkins—he has been an effective counterpuncher and has refused to lead with any proposal or compromise. According to his philosophy of labor relations, he need only sit and listen until the organization accepts his position on a subject.

When we suggested that the BLE invite Mr. Harris to come into the conference room, he suggested that the carrier representatives leave so that we could talk with Mr. Harris in comfort. He said the carriers had nothing to consider with Mr. Harris.

Upon questioning by our negotiators, Mr. Hopkins stated in no uncertain terms that there was no compromise on his part or the members of his committee. The BLE had to accept the carriers' written proposal of August 26, 1982, in total without any modifications of any nature whatsoever. Based upon the attitude expressed by Mr. Hopkins, the BLE's representatives had no other alternative than to leave.

As everyone is aware, the Secretary of Transportation requested that the BLE and NRLC meet with the chairman of the National

Mediation Board and the Director of the Federal Mediation and Conciliation Service, Mr. Kay McMurray, on Friday, September 17, 1982. Meetings were held from 10 a.m. to 12:30 p.m. and 2 to 5 p.m. on that date, from 10 p.m. on Saturday, September 18, through 7:15 a.m. on Sunday, September 19. Mr. McMurray met separately with the parties again on Sunday, and called for a meeting at 9 a.m. on Monday, September 20.

During this 4-day period of intensive mediation efforts—and I emphasize this—BLE made no less than seven proposals in an effort to reach some ground for compromise. Again I emphasize this. We even offered to arbitrate the issue, but to no avail.

Each of our proposals was rejected out of hand. Any language offered by the carriers was cosmetic in nature and contemplated a firm and complete moratorium on wage differential adjustments for locomotive engineers until July 1, 1984.

In effect, the carriers have attempted to tie the hands of locomotive engineers represented by BLE, so that other crew members can receive wage increases during the course of the agreement but we cannot receive an adjustment maintaining the traditional differential. As a result, by July 1, 1984, the compensation paid other members of the crew could exceed wages paid locomotive engineers.

In addition, it is quite evident that the locomotive engineers could never again regain the right to strike on this issue. For all intents and purposes, they would be foreclosed from ever again pursuing this issue effectively.

Historically, however, it has been recognized by the railroad industry, Federal agencies, and railway labor organizations that the skills, knowledge, training, responsibilities, workload, and performance requirements of the position of the locomotive engineer justify a substantially higher rate of pay than other operating employees.

A continuing recognition of this principle is most essential if the railroad industry intends to continue to attract and retain quality personnel for the position of locomotive engineer. It is also essential if the railroad industry intends to maintain and improve the productivity and morale of the engineer work force.

The wage differential between the locomotive engineer and other operating employees is now being dangerously narrowed as a result of a compression caused by the application of the cost-of-living adjustments and across-the-board fringe benefits to all railroad employees as well as a change in the wage relationship between these employees, resulting from a reduction in the traincrew. The pattern is brought about by agreements between the United Transportation Union distributing savings in labor costs to the remaining members of the traincrew.

It is imperative that the issue of changes in compensation relationship resulting from reduction in the traincrew be totally exempt from any moratorium in the national agreement.

We have successfully bargained collectively with individual railroads to obtain maintenance of differential, crew constants, and wages with individual railroads. We feel we must continue to have that ability in the future.

We sincerely request that this committee reject the approach contained in this legislation and allow free collective bargaining as guaranteed by the Railway Labor Act to prevail.

That is the conclusion of my somewhat abbreviated statement. I appreciate the opportunity to appear here. I trust that we will be given every favorable consideration. If there are any questions, we will be more than happy to attempt to answer them.

[The prepared statement of Mr. Sytsma follows:]

My name is John F. Sytsma. I am International President of the 40,000 member, Cleveland based Brotherhood of Locomotive Engineers. 26,000 of those members are on strike on an issue vital to all locomotive engineers and to all Americans who work for a living. Although we are seeking to uphold the principle that the highest skilled and most responsible worker shall receive pay equal to those responsibilities and skills through the maintenance of the engineers' existing wage differential -- a principle that is laudable in itself -- we are on strike on an even loftier plane -- to retain the American worker's right to strike after exhausting the statutory procedures for collective bargaining and mediation.

Present with me today are William J. Wanke, First Vice President of the Brotherhood of Locomotive Engineers and Chief Negotiator; E. L. McCulloch, our Vice President and National Legislative Representative; Virgil F. Davis, BLE Director of Wages and Schedules; and Harold A. Ross, our General Counsel.

In 1926, the Congress enacted the Railway Labor Act. That Act contained a provision for the United States Railroad Labor Board. This Board had jurisdiction to hear and decide disputes between rail carriers and their employee representatives on wage and benefit disputes. The 1926 Act was a beginning but was unable to effectively resolve labor-management disputes in the railroad industry.

Therefore, in 1934, the Congress passed the version of the Railway Labor Act as we in the industry know it. This Act contains a comprehensive scheme for service of notices, negotiations, mediation, proffers of arbitration, cooling-off periods, and the

-2-

appointment of Emergency Boards in disputes that may disrupt a significant portion of the nation's commerce. The Act contains a detailed system of arbitration to adjust controversies between railway labor and the rail carriers as to the interpretation and application of collective bargaining agreements.

In consideration of labor's acceptance of this complex scheme of labor relations, the Act guaranteed railroad employees the right to strike, a right afforded to all other American workers in the private sector.

Congress now has been asked to breach that covenant made with labor in 1934 by passing legislation that will place the report of Emergency Board No. 194 in effect as the 'bargained agreement' between the parties.

Not only would this covenant be breached if this legislation is passed but the Railway Labor Act will be disembowled. The Act imposes pressures upon both parties to reach agreements. With minor exceptions, the procedures of the Act have worked over some 50 years. These influences will be eliminated if this ad hoc legislation is passed. If, as here, one side knows that legislation will be passed that will decide the controversy in its favor, any impetus or influence upon it to reach an agreement in collective bargaining will be removed. In this case, all circumstances establish that the railroads have never had any intention to reach an agreement with the Brotherhood of Locomotive Engineers.

These facts show that the railroads had the specific idea of forcing this dispute to the Congress. We are confident, however, that the Congress will recognize the significance and

-3-

equity of our position.

As I have indicated, this Organization has acted lawfully and responsibly from the inception of this dispute in January 1981. The BLE is one of the oldest labor organizations in the world with a known record for being cooperative and law-abiding. Our record proves our interest in the health of the industry. However, this cooperation has been taken by railroad management as a weakness and has led us to be short changed by the carriers. They have sought givebacks and takeaways from the locomotive engineers to pay for those giveaways to other unions and for their deficiencies in management.

About January 26, 1981, BLE served a notice on those railroads represented by the National Carriers Conference Committee for increases in rates of pay and terms of compensation, and on February 2, 1981, for modifications of health and welfare benefits. On February 5, 1981, the carriers served needless retaliatory counter proposals to eliminate all of our rates of pay, rules and working conditions.

By reason of the preparation of railroad retirement legislation and the hearings on those statutory amendments, the initial conference with the National Carriers Conference Committee did not take place until April 30, 1981. At that meeting, the parties explored the nature of the notices. B.L.E.'s representatives were unable to determine the specifics of the carrier's notice. For example, Part I of that notice states in part, "Modernize and simplified rules governing rates of pay and working conditions." The first facet of that request contemplates a revision of, "the pay structure of road service employees to provide a more realistic relationship between pay and time worked."

-4-

In response to our inquiry as to the meaning of this demand, the carrier representatives acknowledged the ambiguity and generality of their demands and described them as having flexibility. Similar requests have been made by the carriers in every national wage/rules movement for the past several decades. We have never been able to ascertain the exact nature and the full scope of these demands.

As carrier representatives have often said, they are not certain as to what they are seeking, for there must be incentive factors built into the pay structure to insure that the trains will get over the road as fast as possible and thereby maximize service and minimize penalty wage payments.

Over the years, locomotive engineers represented by this Organization have contributed to the financial health of the railroad industry in many ways. Most of these accommodations have been accomplished through the process of collective bargaining, as they should be. Our willingness and ability to cope with these problems to the mutual interest of the industry and the employees we represent is indeed worthy of note.

Today the equivalent of four steam locomotives in the form of four or more diesel units are operated and controlled by one engineer, and in most cases he does this without the help of a fireman. The accommodation to this technological change amounted to about \$1 additional compensation to the engineer for each additional diesel unit added to the lead or controlled unit.

This accommodation extends to diesel units placed somewhere within the train, like in the middle, and operated and controlled from the lead unit by the engineer through remote

-5-

control. Dieselization contributed very substantially to the decrease in the number of locomotive engineers from about 50,000 in 1950 to the present number of 35,000.

New communication systems, such as the radio/telephone system, are another example where the BLE accommodated change. By agreement, the locomotive engineer has assumed the responsibility and additional workload of handling this communication system on the locomotive without additional compensation. This accommodation was made in the 1971 industry-wide agreement.

We also have not opposed the introduction of other communication systems, such as the voice train control with its audio-visual principles and equipment, which would become a part of the locomotive engineer's duties and responsibilities when utilized.

Other examples of accommodation and cooperation to further technological change include automatic train control and locomotive cab signal systems, centralized traffic control signal systems, and automated classification or hump yards. Advances are also being made in track-train dynamics that are bringing new devices and systems in the engineer's workplace.

Another major accommodation by the engineer resulted from the decision imposed by Congress resulting in elimination of firemen or helpers, as they are sometimes called, in through freight and yard service. This change has required the engineer to perform additional tasks, such as mechanical and electrical adjustments on the locomotive and to exercise a much wider spectrum of lookout for conditions affecting the safety of the train, safety of other crew members, and the safety of other employees not on the train. Reductions presently taking place in the

-6-

train crew also are causing changes in the jobs and functions of the locomotive engineers and adding to his responsibilities and duties.

Our policy of accommodation and cooperation has extended into the area of shorter trains with reduced crew size, running through established terminals and under other conditions not generally permitted by agreement. This goes back to at least 1966 when we experimented with the short coal trains called the Bee Line on the Reading Company and subsequently has included such programs as the Jobs Commission on the Illinois Central Railroad, the Task Force on Terminals, and more recently the National Intermodal Demonstration Project. This latter project was implemented on the Milwaukee Railroad with the introduction of the new sprint train piggyback service inaugurated on June 5, 1978, and the Chicago-Twin Cities Corridor.

In fact, two of the last four national agreements entered into between the Brotherhood and the railroads represented by the National Railway Labor Conference contain major concessions to the railroads in response to their alleged need for greater productivity and efficiency.

All four national agreements were reached in direct negotiations between the parties appearing before this Board. These modifications were in response by us to carrier proposals similar to, if not identical with, many of those advanced by the carriers in this present case.

In the May 13, 1971, national agreement, BLE entered into a provision giving the railroads additional flexibility in changing or extending switching limits. Article III permitted the railroads further flexibility in providing switching service

-7-

for new and other industries. Another article expanded the carrier's rights under previous agreements to provide interchange service with yard, belt line and transfer crews. This rule also eliminated light engine movements when making interchange movements.

Probably no contract revision has been more beneficial to the railroads than Article V of the 1971 agreement, which requires road crews to perform interchange service and certain work in conjunction with their own train, such as changing engines and setting out defective or bad-order cars. This rule has had the effect of eliminating many yard and transfer assignments.

As I previously noted, Article VI of that agreement placed upon the locomotive engineer the duties and responsibilities of using radio/telephone on all locomotives.

Article VII was entitled, quote, "Interdivisional, Interseniority District, Intradivisional and/or Intraseniority District Service (Freight or Passenger," end of quote.

This concession expanded upon the carriers' right to establish or extend runs and set forth interest arbitration procedures that the railroads had wanted for years. By a side letter agreement, the 1971 contract provided a procedure to combine separate road and yard seniority.

Finally, in response to a proposal of the railroads, we agreed to establish a standing committee to consider various components of the wage/rules structure. For reasons best known to the carriers, this body really never got off the ground.

The July 26, 1978, national agreement permitted the carriers to establish road/yard service zones beyond the

-8-

established switching limits and to use yard crews to perform switching within those zones. As a result of this provision and the switching limit rule in the 1971 agreement, the use of yard crews is almost unlimited. Section 2 of this Article VIII also established a road/yard service zone up to 15 miles beyond the established switching limits. Under this rule, the carrier has the option to use either road or yard crews to handle road trains that are disabled or tied up under the Hours of Service Act.

All of these changes in working conditions were made in response to the carriers' proposals. They are in addition to those changes which were and are being negotiated almost daily on the individual railroads to meet changing conditions on those respective railroads.

Thus, the job and tasks of the locomotive engineer never have been routine, monotonous, or unchallenging. The job has always been quite the opposite and has become increasingly so in terms of greater responsibility and the variety and number of tasks that we perform.

While locomotive engineers are being cast in the light of creating problems for the railroad industry, that charge is not true. We again are being asked to compensate for and to offset the shortcomings of management and downright mismanagement contributing to higher administration of labor costs.

In that regard, it is highly doubtful that the railroads really want to take advantage of the changes that have already been provided for, such as agreement to extend the length of runs and to permit combinations of road and yard service. In addition, one must question the operational disciplines of

-9-

railroads permitting their trains to consistently be overcome by the Hours of Service Act and to subject themselves to penalty payments for unwarranted initial and final terminal delays.

The locomotive engineers BLE represents, however, should not be called upon to subsidize or compensate for these undisciplined operations on the part of the controllers and managers of railroads by being required to work under substandard wages and working conditions or be requested to pay for the wage increases and fringe benefits which the railroads have given to the crafts represented by other organizations.

As I indicated previously, issues relating to the Railroad Retirement System seemed to take priority, resulting in considerable delay in scheduling further conferences after April 30, 1981. It was not until August 27 and 28, 1981, that the parties resumed negotiations. Additional meetings were held on September 14, October 5th and 20th, 1981. The conferences continued on November 10, 1981, at which time it was announced that the N.R.L.C. had reached a tentative agreement with some of the non-operating railway labor organizations.

As a result of subsequent events, it is quite clear that the carriers' negotiators intentionally derailed the bargaining negotiations with the operating organizations to obtain this agreement, in order to argue that a pattern had been established setting an alleged ceiling on the considerations available to the employees in the operating crews, even though extensive givebacks were being demanded by the railroads.

Conferences continued on November 17, 1981, and at the close of this meeting, the parties tentatively scheduled

-10-

further meetings. However, on November 25, 1981, the carriers, without advance notice to us, invoked the services of the National Mediation Board and that Board assumed jurisdiction and docketed this case as A-10872 on the same date. Mediation sessions were held on December 1, 7, 1981; January 12, 13, 25, 26 and 27; February 24; April 7 and 8; May 20, 26 and 27, 1982 with little accord being reached.

Actually, the carriers did not -- I emphasize did not -- submit a definitive, complete proposal to the organization until the May 20, 1982, conference. On the other hand, BLE gave the carriers complete proposals both before and after May 20th with suggested resolutions that could serve as a basis of settlement of this dispute.

At the May 26th meeting, representatives of the National Mediation Board advised both parties that in its view, its efforts had been unsuccessful and that it was going to extend a proffer of arbitration. The Board did ask the parties to think the situation over and to come back on May 27th to determine if anyone had figured out a means by which the impasse might be broken.

On that date, the NRLC's Chief Negotiator, Charles I. Hopkins, Jr., reaffirmed to the Board that its singular proposal of May 20, 1982, was the sole basis upon which the NRLC would enter into a settlement with the employees represented by BLE.

On June 10, 1982, the National Mediation Board notified the parties that its services had been terminated except as provided in Section 5, Third and Section 10 of the Railway Labor Act.

In light of the recalcitrance of the NRLC to bargain

-11-

in good faith upon the subject matters of the dispute, I sent several informational circulars to BLE's membership, and eventually, an official circular and strike ballot.

By exercise of their democratic rights, BLE's membership overwhelming established that they would strike to obtain a fair and reasonable resolution of the dispute, one in which they would not be asked to take less than the settlement granted to the Brotherhood of Railway, Airline and Steamship Clerks, the Brotherhood of Maintenance of Way employees and the other non-operating employee organizations and nevertheless be required to give up their current wage structure and to grant extensive rule changes.

Therefore, on June 30, 1982, the BLE informed the National Mediation Board that it intended to strike those railroads parties to the dispute on July 11, 1982.

On July 8, 1982, the President of the United States notified the organization by telegram that he had created an Emergency Board under the provisions of Section 10 of the Railway Labor Act. Executive Order 12370 established this Board as Emergency Board No. 194. The members of the Board were Arnold Weber, President of the University of Colorado; D. Quinn Mills, a Professor of the School of Business, Harvard University; and Jacob Seidenberg, an Arbitrator.

At the request of the Administration and the Emergency Board during its organizational meeting with the parties at Chicago's O'Hare Airport on July 15, 1982, which was attended by two members of the Board, we agreed to grant the Board an additional ten days or until August 19, 1982 in which to hear the dispute and to present its report to the President. This

-12-

Board was then reappointed as Emergency Board No. 195 to hear the outstanding dispute between the NRLC and the employees represented by the United Transportation Union. The BLE was granted two days by the Emergency Board, July 20th and 21st, in which to present its case in chief to the Board. This proceeding started at 10:00 a.m. Mr. Weber and Mr. Seidenberg were in attendance. Mr. Seidenberg was ill. Professor Mills did not arrive until mid-afternoon of the first day, after presentation of our opening statement and first three witnesses. The following morning, Mr. Seidenberg left to return home due to his illness. When the hearings adjourned at 5:40 p.m. on July 21, 1982, only Dr. Weber was present.

During the two days allotted to us by the Emergency Board, we presented evidence and expert testimony in support of each and every facet of our Section 6 Notices. We established that there had been a significant wage compression between the pay rates for locomotive engineers and employees of other crafts; that the agreement between the non-operating crafts and the NRLC fell below the inflation rate and was significantly out of line with settlements in all key industries and in comparable occupations; that the cost of living adjustment clause in the railroad industry is substandard; that the meal allowance of \$2.75 for an away-from-home engineer is unsatisfactory; that road engineers did not receive any holidays; that vacations were inadequate; that the lack of sick leave and long term disability benefits is unconscionable; and that the present hospital, medical, surgical and other health and welfare insurance benefits were totally inadequate and significantly below the benefits provided to most of organized labor and government employees.

-13-

The carriers presented their case to the Emergency Board on July 26, 1982 and for a short period on July 27th. Cleverly fabricating the issues before the Board, Mr. Hopkins and the NRLC took the position that all issues between the carriers and BLE had been resolved except for two matters. By reason of the non-operating crafts agreement, which Mr. Hopkins contended set a pattern that had to be imposed upon locomotive engineers, he asserted that there were three outstanding issues, two of which were applicable to BLE. He urged that the Board recommend (1) the appointment of a Productivity Commission with the power to study proposals advanced by the railroads, including the basis of pay, elimination of arbitraries, work rules that provide for a division of work between road and yard service engineers, and so on, plus any proposals advanced by BLE, on which the Commission could make final and binding decisions (in other words, act as an arbitrator); (2) a freeze on pay increases to the mileage rate of engineers, arbitraries and special allowances; and (3) elimination of the cabooses in which the road conductor and rear brakeman ride.

The issue of a holddown or freeze on pay increases to our mileage rates and other elements of compensation had not been pressed or discussed by Mr. Hopkins with us until the parties were in mediation.

Notwithstanding the duties placed upon it by Section 10 of the Railway Labor Act, the Emergency Board saw itself as an adjunct of the bargaining process. Accepting the railroads' views, the Board ignored our presentation and only considered the items that the railroads considered important. Thus, the Board recommended at the outset that the BLE accept the non-op

-14-

settlement, that is, an 11% increase over a 39-month period, and a moratorium on the services and progression of notices during this period. The Board did impose the increases on all elements of compensation.

The Board did accept the carriers' concept of a study commission. The Board, however, rejected a study commission approach embracing final and binding arbitration. Rather, the Board proposed a highly structured Commission that would not complete its work until December 1, 1983.

During this period and until July 1, 1984, the Board recommended that a complete moratorium be imposed on the BLE, which restructured the BLE from progressing, among other things, any notices it might have served seeking the maintenance of wage differentials where the other members of the crew obtained additional compensation during the period of the agreement.

At the time that the BLE and the carriers executed the March 6, 1975 national agreement, they signed a side letter which stated that the moratorium provision of that agreement was not applicable to pending or prospective notices served on individual railroads and subject to local bargaining, which sought to adjust compensation relationships between the engineer and other members of the crew. A similar exception was contained in the July 26, 1978 agreement between BLE and the NRLC.

For a period in excess of 7 years, this exception did not present any problem to the railroads. Over the years, BLE peacefully obtained wage differential agreements with several major railroads, including the Burlington Northern and the Missouri Pacific, and entered into one as late as June 3, 1982 with the Atchison, Topeka and Santa Fe. Although contending

-15-

that the subject of maintenance of wage differential should be covered by the moratorium, this agreement with the Santa Fe was concluded only a few days after the Mediation Board had indicated that its efforts to resolve the dispute had been unsuccessful.

It would appear that the Santa Fe, which is one of the major carriers involved in this dispute, just three months ago did not consider the moratorium on wage differentials to be any impediment to a national agreement with the BLE or did it view the situation of alleged leapfrogging with any concern.

Emergency Board 194's report was issued on August 19, 1982. Although the Act imposes a 30-day cooling off period after the issuance of a report, Mr. Hopkins and the NRLC would meet with us on August 25th and for several hours on August 26th. We did not meet again until September 13th, since Mr. Hopkins chose first to conclude an agreement with Mr. Hardin, who he apparently concluded by this time not only could be a more recalcitrant negotiator, but one with more to offer.

Our negotiating team met with the NRLC from 10:35 a.m. to 1:20 p.m. and 3:10 p.m. to 5:20 p.m. on September 13th. Mr. Hopkins decided that the meetings should be terminated at that time. We suggested that meetings be resumed at 8:00 a.m. on the following day, but he requested that we meet at 10:00 a.m. We met until 12:30 p.m. on September 14th and returned at 2:30 p.m. When we left, we had understood the carriers would submit an alternative on the outstanding issues. The carriers were not prepared to resume on our return, and our committee conferred with National Mediation Board Chairman Robert Harris and Mediator Meredith for 30 minutes. The carriers finally came in at 3:15 p.m. Mr. Hopkins advised that the carriers had no

-16-

alternatives and was shocked to think that he had to present one. Throughout bargaining, Mr. Hopkins has been an effective counterpuncher and has refused to lead with any proposal or compromise. According to his philosophy of labor relations, he need only sit and listen until the organization accepts his position on a subject. When we suggested that the BLE invite Mr. Harris to come into the conference room, he suggested that the carrier representatives leave so that we could talk with Mr. Harris in comfort. He said the carriers had nothing to consider with Mr. Harris. Upon questioning by our negotiators, Mr. Hopkins stated in no uncertain terms that there was no compromise on his part or the members of his committee. The BLE had to accept the carriers written proposal of August 26, 1982 in total without any modifications of any nature whatsoever. Based upon the attitude expressed by Mr. Hopkins, the BLE's representatives had no other alternative than to leave.

As everyone is aware, the Secretary of Transportation requested that the BLE and NRLC meet with the Chairman of the National Mediation Board and the Director of the Federal Mediation and Conciliation Service, Kay McMurray, on Friday, September 17, 1982. Meetings were held from 10:00 a.m. to 12:30 p.m. and 2:00 to 5:00 p.m. on that date, from 10:00 p.m. on Saturday, September 18th, through 7:15 a.m. on Sunday, September 19th. Mr. McMurray met separately with the parties again on Sunday, and called for a meeting at 9:00 a.m. on Monday, September 20th.

During this four-day period of intensive mediation efforts, BLE made no less than seven proposals in an effort to

-17-

reach some ground for compromise. Each of those proposals was rejected out of hand. Any language offered by the carriers was cosmetic in nature and contemplated a firm and complete moratorium on wage differential adjustments for locomotive engineers until July 1, 1984.

In effect, the carriers have attempted to tie the hands of the locomotive engineers represented by BLE, so that other crew members can receive wage increases during the course of the agreement but he cannot receive an adjustment maintaining the traditional differential. As a result, by July 1, 1984, the compensation paid other members of the crew could exceed wages paid locomotive engineers. In addition, it is quite evident that the locomotive engineers could never regain the right to strike on this issue. For all intents and purposes, they would be foreclosed from ever pursuing this issue effectively.

Historically, however, it has been recognized by the railroad industry, federal agencies and railway labor organizations that the skills, knowledge, training, responsibilities, work load and performance requirements of the position of the locomotive engineer justify a substantially higher rate of pay than other operating employees.

A continuing recognition of this principle is most essential if the railroad industry intends to continue to attract and retain quality personnel for the position of locomotive engineer. It is also essential if the railroad industry intends to maintain and improve the productivity and morale of the engineer work force.

The wage differential between the locomotive engineer and other operating employees is now being dangerously narrowed,

-18-

as a result of a compression caused by the application of the cost of living adjustments and across-the-board fringe benefits to all railroad employees as well as a change in the wage relationship between these employees, resulting from a reduction in the train crew consist. The pattern is brought about by agreements between the United Transportation Union distributing savings in labor costs to the remaining members of the train crew.

It is imperative that the issue of changes in compensation relationship resulting from reduction in the train crew consist be totally exempt from any moratorium in the national agreement.

The BLE must continue to have the opportunity, under free collective bargaining, to deal with the tremendous disruptive effect in wage relationships taking place now and which may take place in the future. That important issue must be free from any constraints under terms of a moratorium in this national agreement as it has been in the past two national agreements.

The CHAIRMAN. Mr. Sytsma, in your prepared statement on page 17, in the second paragraph, you say in the second sentence, "As a result, by July 1, 1984, the compensation paid other members of the crew could exceed wages paid locomotive engineers."

Mr. SYTSMA. Yes, sir.

The CHAIRMAN. Do you feel that there will be any exceeding of locomotive engineers' wages by other members of the crew before July 1, 1984?

Mr. SYTSMA. Yes, sir. There is a very distinct possibility.

The CHAIRMAN. Mr. Harris, who testified, indicated that he felt that it is a distinct possibility, but he thought it would be not much more than a couple hundred UTU members who have high seniority and who might be able to exceed the compensation of locomotive engineers with low seniority. Would you agree with that or would you disagree with that?

Mr. SYTSMA. I would say that is an assumption on his part.

The CHAIRMAN. Is it a fair assumption?

Mr. SYTSMA. No, I am not prepared to say that it is a fair assumption because none of us know what the circumstances will be over the next several months.

The CHAIRMAN. Therefore, you really do not know, then. It could be more or it could be less?

Mr. SYTSMA. That is true, sir.

The CHAIRMAN. You say, "In addition, it is quite evident that the locomotive engineers could never regain the right to strike on this issue." What the President has suggested here through his Secretary of Transportation is that, in essence, this matter be resolved with the right to negotiate, et cetera, up through June 30, 1984, throughout this contract bargaining period.

That would not prevent you from striking at that time. Do I understand what you are saying here to mean that, if this legislation is passed, you feel it would be continually invoked in the future?

Mr. SYTSMA. Yes, sir. We feel that a precedent would be set that would be very damaging to us in the future.

The CHAIRMAN. One of the controversies that has arisen here, or at least one of the issues, has been that this controversy has been labeled by some as an "interunion" battle between two competing unions, the UTU and the BLE, over whether to preserve the historical pay differential that the BLE enjoyed over the UTU.

It also has been suggested that management is caught in the middle. Is that a fair characterization?

Mr. SYTSMA. I do not feel it is, sir.

The CHAIRMAN. Could you tell me why?

Mr. SYTSMA. I feel it is a matter between the UTU and the railroads, and it is a matter between the BLE and the railroads. Mr. Hopkins has negotiated these crew consist agreements in the full knowledge that he would have to deal not only with the UTU and the BLE, and he is reaping the harvest now.

The CHAIRMAN. I see.

Senator Kennedy?

Senator KENNEDY. As I understand it, you worked out your negotiation with regard to the board and the carriers themselves. You had a successful negotiation, as I understand it, with the exception of this issue?

Mr. SYTSMA. I am going to defer to Mr. Wanke inasmuch as he is our chief negotiator, Senator.

Mr. WANKE. Senator, I would say there were two issues, one being the major issue and the subject of the agenda be placed before the study committee as well as working out the time frames on the study committee.

Senator KENNEDY. What was the basic wage increase for your membership over the period?

Mr. WANKE. I believe I heard Mr. Hopkins testify today it was in the range of 20 to 29 percent.

Senator KENNEDY. Is that correct?

Mr. WANKE. I think he is in the ball park, yes, sir.

Senator KENNEDY. You are representing your membership. You sure as the devil would know, wouldn't you? Are you taking the carriers' word for it?

Mr. WANKE. It depends upon COLA and the cost of living.

Senator KENNEDY. I see.

Mr. WANKE. Originally, it was supposed to be about 34 percent increase, but it has not panned out that way.

Senator KENNEDY. However, it is about 28 percent? Is that correct?

Mr. WANKE. That is fairly close, yes, sir.

Senator KENNEDY. Over what period of time?

Mr. WANKE. Thirty-nine months.

Senator KENNEDY. Thirty-nine?

Mr. WANKE. Yes, sir.

Senator KENNEDY. Therefore, those issues with regard to the wage increases have been worked out satisfactorily as far as your bargaining team is concerned?

Mr. WANKE. We accepted the pattern of wage increase, yes, sir.

Senator KENNEDY. This remains as the real sticking block; is that correct?

Mr. WANKE. Yes, sir.

Senator KENNEDY. Do you believe that if you had a period of time of negotiation with the 10 days or 2 weeks negotiation with the carriers that this issue could be resolved?

Mr. WANKE. I would hope it would be, sir. I would hope it would be. I would try to resolve it to the best of my ability. I am of the opinion that the carriers' position is pretty intractable right now, but I certainly am willing to sit and talk with them; yes, sir.

Mr. SYTSMA. Senator, Mr. Hopkins appeared before the House committee. He indicated that his position was engraved in stone, that he would not move. He was absolutely intractable. I do not know what he has indicated to this body, but, on the basis of that, we would say that unless he got off that particular position that it would be very difficult to successfully negotiate a settlement.

Senator KENNEDY. If you were able to resolve this in a way which increased your benefit package, what do you think would be the reaction of the UTU, based upon your own understanding of their position?

Mr. WANKE. I do not know what the reaction would be.

Senator KENNEDY. They have said that they would have to go back to the negotiating table. Do you have any reason to question that or go out on strike?

Mr. WANKE. If they said so, then I believe what they said. They would probably go back to the negotiating table.

Senator KENNEDY. Would you favor a period of time for a continued negotiation with the carriers?

Mr. WANKE. I would be receptive to it, yes, sir.

Senator KENNEDY. Is that your position?

Mr. SYTSMA. Yes, sir, we have indicated that.

Senator KENNEDY. If that was not going to be productive, then what?

Mr. SYTSMA. We would be in the same position as we are now.

Senator KENNEDY. So there would be a strike. Is that correct?

Mr. SYTSMA. There would be a distinct possibility of one.

Senator KENNEDY. Thank you.

The CHAIRMAN. Senator Randolph?

Senator RANDOLPH. I have no questions, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Randolph.

Senator Metzenbaum?

Excuse me. Senator Nickles? I did not mean to bypass you, Senator Nickles.

Senator NICKLES. I have a couple brief questions, Mr. Chairman.

What is the purpose of the strike? Is it over the differential or the right to strike, or both?

Mr. SYTSMA. It is tied in. The right to strike for the differential on individual railroads is involved. We are not striking for any money amount. It is not a monetary issue in that sense. We are fighting or striking for the right to be able to pursue our demands and have the right to strike in pursuing these demands on individual railroads over the period of the national agreement.

Senator NICKLES. As to the differential, you alluded earlier to the compensation increase to which you have already agreed. Is it around 28 percent over a period of 3 years or 39 months?

Mr. WANKE. Thirty-nine months.

Senator NICKLES. That figures out to about 7 percent per year. What COLA factor are you assuming?

If I understood the thrust of Senator Kennedy's question, it was that the negotiated settlement to which you agreed as far as wages was about 28 percent over a period of 39 months, which is about equal to what, about 7 percent per year?

Mr. WANKE. Seven or eight percent.

Senator NICKLES. What COLA factor were you using?

Mr. WANKE. It was a cap of 8 percent.

Senator NICKLES. A cap of 8 percent?

Mr. WANKE. Yes, sir.

Senator NICKLES. Is there any other way that an engineer could receive more money in addition to that, any productivity bonuses or anything that might have increased their salary more than that?

Mr. WANKE. I do not think so, no.

Senator NICKLES. What is the base pay or the average pay that you would be using to compute that for the engineers?

Mr. WANKE. I believe going into this contract it was \$10.88 an hour.

Senator NICKLES. What is that per year?

Mr. WANKE. I cannot figure that out right now, Senator.

Mr. SYTSMA. It is very difficult to come up with a yearly figure because of the great disparity in the types of runs, the types of services performed, the types of motive power used. There is a great complexity in determining it.

Senator NICKLES. Do you know what the average annual wage, including whatever pay bonuses or whatever a person might receive, last year or this year was?

Mr. SYTSMA. There was a figure thrown out before the House committee this morning which I think is pretty much in the ball park. That is that the gross average annual earnings for a locomotive engineer would be about \$37,000.

Senator NICKLES. What would it be for a UTU member?

Mr. SYTSMA. I do not have any figures on that.

Senator NICKLES. I heard the \$37,000 figure earlier. I think I heard something closer to like \$33,000. Does that sound right?

Mr. SYTSMA. Again, I am not qualified to answer that, but it sounds reasonable.

Senator NICKLES. If I understood your answer to my first question, the reason for the strike was not so much that you are dissatisfied with the increase that you already have won for your members, but that you wanted to keep this differential in; you wanted the right to strike to keep that differential?

Mr. SYTSMA. You are absolutely correct. That is the crux of the whole matter.

Senator NICKLES. It is not that your members are not making enough; it is that you are afraid that possibly another union might be making as much?

Mr. SYTSMA. The possibility exists if we do not have the right to go out and make these agreements during the pendency of this agreement on individual railroads that members of other organizations—I should not say that, but I should say people working in other crafts, because this is not an interorganizational matter—people working in other crafts would have the possibility of receiving more compensation than the traditionally highest paid member of the train crew, who is the locomotive engineer.

To make a comparison, the captain is the highest paid person on an airplane. If his compensation relationship were disturbed in any way, I am sure the airplane would not fly.

Senator NICKLES. We have a football strike at the time. Some football players make more than U.S. Senators. Should the U.S. Senators try to close that differential? [Laughter.]

Mr. SYTSMA. The average football player has a work life of about 4½ years, I think, whereas the average Senator—

The CHAIRMAN. The average Senator may not have much longer. [Laughter.]

Senator NICKLES. Do you think if we went to a cooling off period, given your comment about other people around the table who would have their feet in concrete, do you think if we had a 30-day, 60-day, or any period of cooling off that we would not be back here at the end of that cooling off period faced with the same dilemma we are today?

Mr. SYTSMA. We do not have the benefit of what Mr. Hopkins indicated to you in that respect. I assume that you asked him the same question.

However, I could guarantee you that if we did have such a period that we would expend every effort at our command to try to reach a resolution. I cannot guarantee any more than that.

Senator NICKLES. How long have you been working with them in this earnest way to come up with a resolution to the problem?

Mr. SYTSMA. We have been negotiating in a very earnest way for a period of 18 months, not during the entire period, of course. However, as I indicated in my presentation, it has been rather sporadic.

They did not get down to an interest in real bare knuckles negotiating until this past week. With the strike deadline coming, then they decided that we were perhaps serious in what we were asking and they got down to negotiations.

Even at that, again in the timeframe that I laid out to you, those negotiations did not go around the clock until the Federal mediator, Mr. McMurray, came into the picture on Saturday.

Senator NICKLES. I think I saw in your testimony where you had 40,000 members.

Mr. SYTSMA. Yes.

Senator NICKLES. 26,000 are on strike?

Mr. SYTSMA. That is correct.

Senator NICKLES. The other 14,000 elected not to strike?

Mr. SYTSMA. The other 14,000, sir, are employed by Conrail, which is not a party to this strike, and the Canadian railroads.

Senator NICKLES. Is a no-strike clause with Conrail in the agreement?

Mr. SYTSMA. No; we have separate negotiations going on with Conrail at the present time.

Senator NICKLES. Do they have the right to strike?

Mr. SYTSMA. As of this point, yes, under the Railway Labor Act we have a right to strike after we have exhausted all means of a settlement under the act.

Senator NICKLES. Does their contract have a separate expiration date?

Mr. SYTSMA. Yes.

Senator NICKLES. Of the 26,000—you identified the main contention of the strike was your desire to protect the differential, not your dissatisfaction with the pay level of your people, which you mentioned averaged something like \$37,000 and it would increase 28 percent over the next 39 months.

Do you think that issue of itself is worthy of putting thousands and thousands and thousands of other people out of work and maybe putting an economy that is already in very shaky and unstable condition even in a much more precarious position?

Mr. SYTSMA. Senator, there is no right time for a strike. We can only engage in a legal strike at the end of a long process which is afforded us under the terms of the Railway Labor Act. The only time we can pick and choose to strike would be if we engaged in an illegal strike, and we would not do that. We regret very much the impact on the economy, but we have no choice as far as timing is concerned.

Senator NICKLES. Are you affiliated with the AFL-CIO?

Mr. SYTSMA. No; we are not. We are independent.

Senator NICKLES. I know in my State we are looking at plants or factories which will have to close down in a very short period of

time. I know that is nationwide. We are looking at thousands of people. I am sure a lot of those people, union members or nonunion members, are looking and saying, "Wait a minute. Yes; you have some people here who have jobs, who have good-paying jobs. They are going to put me out of work." There will probably be a very hostile attitude toward your union.

Mr. SYTSMA. As of now, our Cleveland office has indicated to us that they have received several letters, telegrams, and telephone calls from people in other industries and within the railroad industry itself congratulating us on our stand and encouraging us.

Senator NICKLES. If you have a member in your union, and your union is out on strike but that particular member wants to cross the picket line and go to work, can you fine him? Can you penalize him? Can you kick him out of the union? What are the consequences?

Mr. SYTSMA. He can be penalized by expulsion after he has a trial in his local.

Senator NICKLES. Expulsion from the union or from his job?

Mr. SYTSMA. From the union. We cannot touch his job, no.

Senator NICKLES. You could not touch his job?

Mr. SYTSMA. No.

Senator NICKLES. He could effectively quit the union and you could not touch him?

Mr. SYTSMA. Absolutely.

Senator NICKLES. If an individual says, "I need my job, maybe I would like to strike, but I cannot afford it because of my family situation," or whatever it is, he could cross the picket line and there would be no adverse economic consequences toward him in any way?

Mr. SYTSMA. Absolutely. There might be adverse social consequences, but not economic.

Senator NICKLES. Would you define "adverse social consequences"?

Mr. SYTSMA. His peers would not think too much of him. They probably would stop speaking to him. They might even indicate to him their displeasure in other ways. They might even call him some names.

Senator NICKLES. That would not be the policy advocated by the leadership of the union?

Mr. SYTSMA. No; that is just the traditional thing which is traditional, I believe, with all of organized labor.

Senator NICKLES. I have no further questions, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Nickles.

Senator Metzenbaum?

Senator METZENBAUM. Mr. Sytsma, how long has the BLE been in business as an operating union?

Mr. SYTSMA. Pardon me? I did not hear your question.

Senator METZENBAUM. How long have you been a labor organization representing your members in this country?

Mr. SYTSMA. 1863. That is 119 years.

Senator METZENBAUM. You have had how many strikes during that period?

Mr. SYTSMA. The last national BLE strike was in 1946. That lasted approximately three-quarters of a day. Prior to that, I don't believe we ever had a national strike.

Senator METZENBAUM. You do not think you ever had a nationwide strike?

Mr. SYTSMA. No. If there was one prior to that, it is lost in the pages of antiquity. I think that indicates our complete responsibility and our traditional conservatism.

Senator METZENBAUM. As a matter of fact, is it not the case that you oftentimes have been criticized as being too conservative as a labor organization?

Mr. SYTSMA. That is true.

Senator METZENBAUM. Particularly when you supported the President, this President.

Mr. SYTSMA. Yes. I think we have been unjustly accused of supporting the President. We were told this morning that we supported President Reagan in his campaign for President, which is absolutely untrue because we do not support presidential candidates. We support congressional candidates, but we have never supported a presidential candidate.

Inasmuch as Mr. Reagan is President of the United States, I support him as the President. He is the leader of the Nation. I sincerely hope that his policies work out for the benefit of all Americans. In that respect, I support the President.

Senator METZENBAUM. In connection with this legislation, you do not support him? You do not support this legislation?

Mr. SYTSMA. In all candor, no.

Senator METZENBAUM. Would your union be willing to agree to voluntarily arbitrate this issue, order your members to return to work immediately, and at the same time commit yourself to the Congress that, whatever the result of the arbitration decision, you would not thereafter strike in connection with the same issue?

Mr. SYTSMA. Senator, as I indicated in my presentation, we offered to arbitrate the issue as late as yesterday morning—in fact, yesterday noon. We were turned down. We still stand ready to arbitrate the issue.

I would have to caucus with my committee here before I indicated to you or this body that we would be willing to pull the strike down, but we are willing to arbitrate. We are on the record as being willing.

Senator METZENBAUM. Would you recommend that if the carrier agreed to arbitrate that you would order your members back to work?

Mr. SYTSMA. Again, I would have to consult with my committee. I cannot make that decision unilaterally.

Senator METZENBAUM. I was asking whether you personally would recommend it.

Mr. SYTSMA. I am not prepared to say.

Senator METZENBAUM. But you would be willing to consider it?

Mr. SYTSMA. Absolutely.

Senator METZENBAUM. The matter of considering it would take a matter of moments or hours or days or weeks? How long would it take?

Mr. SYTSMA. Do you mean to get the men back to work?

Senator METZENBAUM. Well, no. I am talking about making a decision.

Mr. SYTSMA. To make a decision?

Senator METZENBAUM. Yes.

Mr. SYTSMA. About 4 minutes.

Senator METZENBAUM. Four minutes?

Mr. SYTSMA. Yes; at the outside.

Senator METZENBAUM. Would you be willing to agree that if you did arbitrate it and you lost the arbitration, then you would not thereafter strike in connection with that same issue?

Mr. SYTSMA. We go into the ball game knowing that if we lost, we lost. We would not have any recourse.

Senator METZENBAUM. I have no further questions.

The CHAIRMAN. Let me ask you this question. Mr. Hardin, you might think about this, also.

If we had a binding arbitration begin this evening, and part of the instruction to the arbitrator would be that Mr. Hardin's union would not take less than the wage and fringe benefit package that they have now but both unions would be part of the arbitration, you might get more; you might not get anything? Would that interest you at all?

Mr. SYTSMA. Senator, we would prefer—in fact, we would insist—that if we engaged in arbitration it be on a one-to-one basis with the carriers and the arbitrator.

The CHAIRMAN. The problem is that that cannot occur. The carriers are unwilling to arbitrate with just one party. They have to have both parties as part of the arbitration.

Why don't we ask the—I think we did ask the carrier. Mr. Hopkins, I think we did ask you if you were willing to arbitrate with the BLE. If I recall your answer, it was basically that if the arbitrator came up with anything different from what it is right now, then you might have a problem with the UTU. You would face a strike from them that would upset the negotiation.

Mr. HOPKINS. Yes; sir.

The CHAIRMAN. What if you could get both of them together but with the UTU not getting a penny less than what they have now? Would all three parties be willing to enter into arbitration? You have to understand that the engineers might get a little bit more than what their present posture is; I don't know. This is just an idea.

Mr. WANKE. Senator, we submitted a proposed question for arbitration to Kay McMurray, the Director of the Federal Mediation—

The CHAIRMAN. We cannot hear you.

Mr. WANKE. We submitted a proposed question for arbitration to Kay McMurray of the Federal Mediation Conciliation Service yesterday, early afternoon. The question read, and he had his secretary take it down in shorthand:

"Are locomotive engineers entitled to the maintenance of the differential between their compensation with other members of the crew when existing crew compensation arrangements have been altered? If the answer is yes, what should be the terms of the provision?"

He took that back to Mr. Hopkins, and Mr. Hopkins declined to arbitrate the question.

The CHAIRMAN. Let me ask my question again. Would you, Mr. Hopkins, be willing to enter into binding arbitration with both of these unions so long as the UTU would not have any wages and terms and conditions of employment less than what they presently negotiated in their contract?

Mr. HOPKINS. Senator, if I understand what you are asking, it sounds to me like a prescription under which neither union could get any less; they could only get more. To me, that looks like kind of a loaded question.

The CHAIRMAN. This is where you were before, and you have not been able to resolve it?

Mr. HOPKINS. I have said, and both organizations know it, that we would be fully prepared to have an arbitration, have a study commission recommendation which would become final and binding because that is the forum in which all of the pay questions—

The CHAIRMAN. Mr. Sytsma is not willing to do that. Therefore, we are right back to the same impasse.

Mr. SYTSMA. That is right.

Mr. HOPKINS. Yes. We say this, and it is common sense as well as equity—a pay question should be considered in a forum which has the full spectrum of the system of pay before it as well as all of the interested parties, not just one or just two.

The CHAIRMAN. I see your point. If the UTU entered into a binding arbitration and got less than what Mr. Hardin has presently negotiated for his employees, he would have a pretty rough time getting that approved by them.

Isn't that right, Mr. Hardin?

Mr. HARDIN. Absolutely.

Senator KENNEDY. Did the UTU agree to have that issue submitted to that pay board, Mr. Hardin?

Mr. HARDIN. The UTU agreed to present a series of questions. That was one of the specific questions.

The CHAIRMAN. So you have been through this process already?

Senator KENNEDY. That would be decided in 1983?

Mr. HARDIN. The study commission would act in the next—

Senator KENNEDY. Why are you willing to do it, and why aren't you?

The CHAIRMAN. You are not meaning the—

Senator KENNEDY. The engineers.

The CHAIRMAN. The BLE.

Mr. SYTSMA. Excuse me, I am confused. Would you ask the question again?

Senator KENNEDY. As I understand it, Mr. Hardin has indicated that they have worked out their negotiations, that this particular issue will go to the pay board which reports back in 1983. This is one of the issues which will be considered for the next round of negotiations; at least the recommendation will be considered. However, you are not prepared to accept that?

Mr. SYTSMA. No, sir.

Senator KENNEDY. Can you tell us why?

Mr. SYTSMA. I don't think it would redound to the best interest of our membership. Mr. Hardin has a completely different situation.

He has the freedom to negotiate these agreements without any restraints. He can initiate a crew consist agreement without constraints. When that agreement is in place, then we would, in turn, initiate a request for a restoration of the differential, but we have the constraints on us of not being able to strike on the issue.

Senator KENNEDY. Just a final question and then I will yield.

If he had not made this part of the negotiation—these adjustments in terms of the manpower situation—would you be on strike?

Mr. SYTSMA. No, I do not believe we would, all circumstances being equal.

Senator KENNEDY. So it's, what he was able to work out, in his negotiation that is the real basis the principal reason, for the strike?

Mr. SYTSMA. Senator, we have had this for 7 years. It is not on the basis of something that he negotiated this time that we are in this problem. The problem is that we have had the freedom to negotiate these agreements on individual railroads without constraint for the past seven years. We obtained that through mutual agreement with Mr. Hopkins and his committee.

Now during this round of negotiations Mr. Hopkins and his committee have decided that it is time to call a halt to that, and they want to deprive us of the ability to progress these negotiations with the possibility of a strike as a weapon.

We have successfully made these agreements on four or five different railroads without a strike. There are five or six railroads at the present time where we have notices served. They have been stalled along, and eventually, I suppose, if we did not have this constraint, we would be able to settle them. However, without the right to strike, there is no possibility of settling them in the future.

The CHAIRMAN. Let me go to Senator Quayle.

Senator QUAYLE. I have no questions.

The CHAIRMAN. Are there any other questions?

Senator METZENBAUM. Mr. Sytsma, would you be willing to return to work or at least to take up the matter with your committee promptly?

Mr. SYTSMA. Excuse me, Senator. I did not catch that?

Senator METZENBAUM. I am sorry.

Would you be willing to submit the one outstanding issue to arbitration with the understanding that the UTU would go forward with their ratification of the contract, and if the arbitrator's decision came in a manner that they felt was unfair to their interests, they would then have reserved to themselves the right to strike or to take action under the Railway Labor Act? Under those circumstances, would that be satisfactory to you?

Mr. SYTSMA. Senator, bless the UTU. I feel they should be able to get anything they can get. I wouldn't, in the first place, have any power to place those constraints on them. No matter what they wanted to do, we would still be willing to submit this to arbitration.

Senator METZENBAUM. Mr. Hardin, would that kind of an agreement be acceptable to you? Would you go forward with ratification if the carriers would agree to that additional modification in your contract that would provide that, if the arbitrator should rule in a

manner that you felt worked out to be inequitable to your own members, then you would reserve your rights under the Railway Labor Act to indicate there was a labor dispute and move forward, if necessary, with a strike?

Mr. HARDIN. Senator, certainly I would. The way you worded it—if you let me determine whether I would be disenfranchised, and I am the one who makes the decision and they can utilize the Railway Labor Act, certainly.

Senator METZENBAUM. With the understanding that the arbitrator ruled against the union, then obviously you would have no right to strike at all because you would not be any worst off than you are at the moment.

Mr. HARDIN. We are in pretty bad shape right now, truthfully.

Senator METZENBAUM. But you are willing to accept it now?

Mr. HARDIN. I don't know what they are going to arbitrate. If I knew what they were going to arbitrate, I could participate in the arbitration, and the only thing that was arbitrated was the moratorium provision which gives them the right to strike, and which I voluntarily agreed not to strike due to the situation throughout the country. However, I would like a point of personal privilege to clear up one thing. I may have some of my voting members here. I would not want them to misconstrue the record.

The crew consists, we have never initiated crew consists. I am bitterly opposed to it. It was mandated by the courts who required us to negotiate with the railroads to reduce the number of people on the ground crews.

We have complied with that and we have made numerous agreements, but we were not the moving party; we were the defendant.

I would like to clear up the record on that. I may have some members present here.

This situation here, what you arbitrate is the question. I don't know what the dispute is. I thought the dispute was that they were demanding the right to strike individual railroads at any time to participate in our productivity. If they have the right to strike those railroads, then you can readily understand I would be a president without a union if we do not have that right.

I voluntarily gave it up so that we would have peace during the bargaining period.

Senator METZENBAUM. If we could figure out a way to spell out the language of what is being arbitrated, it seems to me there is only one issue outstanding. If we put it in your words, then I understand that it is a continued opening and the carrier could never agree to that. It seems to me it is not quite that complicated and could be reduced to a more elementary statement of the issue and then, if there is a ruling against the union, that would bring the matter to a conclusion. If there is a ruling in favor of the union, then you would have a right to reevaluate your own position on the basis of that.

Mr. HARDIN. It is too much of a mixed bag. I will certainly cooperate in any way I can.

I agreed to put the question per se into the study commission and they would have 6 to 8 months to present the material, and then the study commission would make a recommendation.

The so-called leapfrogging, their serving notices on one railroad and our serving notices on another, those would have to be treated separately. We will certainly cooperate in any way we can.

Senator METZENBAUM. Thank you.

The CHAIRMAN. It is a difficult problem. I do not know that there is any real quick solution to it.

Mr. Sytsma, one of the great difficulties that you have is that it is an important issue to you, but it is a narrow issue in the overall railroad business. I can see why it is an important issue to you. We have to weigh that as a committee and as a Senate against the economic distress that it is bringing to the country. The Secretary made a pretty compelling case this morning, as have others, that it is a very difficult problem for the country. I do not know how this is going to turn out. It is a tough issue for us. I just want you to know that because nobody feels good about resolving this problem except through the collective bargaining process with all rights reserved, except for these economic circumstances. That does cloud the issue and makes it very difficult for us.

I wish there were some way we could get all the parties together and resolve it through some form of arbitration means. It is apparent that we cannot do that. At least, it appears to me that we cannot do that unless one of you can come up with an idea that we have not come up with yet.

I think the committee will recess. We will meet as close to 7 o'clock as we can. The Democrats will caucus; the Republicans will caucus. Then we will meet here in committee hopefully at 7 o'clock, if we can. Is that all right?

Senator QUAYLE. Mr. Chairman, what is your desire—to come back at 7?

The CHAIRMAN. I would like to caucus now and be in this room at 7 o'clock.

Senator QUAYLE. For what purpose?

The CHAIRMAN. To determine what to do with this legislation.

Senator RANDOLPH. I think you are realistic. Thank you very much.

[Additional material supplied for the record follows:]

September 19, 1982

STATUS REPORT -- RAIL STRIKE SITUATION

The Background

- * National collective bargaining between the rail industry and major rail unions began in January 1981.
- * By summer 1982, agreements had been reached between the railroads and all the unions except the United Transportation Union (UTU) and the Brotherhood of Locomotive Engineers (BLE).
- * In July, under provisions of the Railway Labor Act, President Reagan convened an Emergency Board to forestall a strike and make recommendations for resolving the disputes.
- * The Emergency Board submitted its recommendations for a settlement agreement on August 20.
- * The railroads reached a tentative accord with the UTU on September 14.
- * No agreement was reached between the NRLC and the BLE and negotiations were suspended, September 15.

Actions Taken

- * On September 16, Secretary of Transportation Drew Lewis -- in consultation with Robert Harris, Chairman of the National Mediation Board -- asked Kay McMurray, Director of the Federal Mediation and Conciliation Service, to join in mediating the dispute.
- * Mediation efforts continued through the early hours of September 19, but failed to produce a settlement. The BLE exercised their legal right to strike at 12.01 a.m. Sunday, September 19.
- * Secretary Lewis and Secretary Donovan early Sunday asked Mr. McMurray and Mr. Harris to get the parties together again in a further effort to settle the dispute. If that fails, they indicated they would recommend actions to the President on Monday morning.

The Issue

- * While the issue revolves around wages, the BLE is not contesting the wage proposal for their contract. The remaining dispute between the BLE and the railroads consists of a single issue: the pay differential between the locomotive engineer and other members of a train crew.

-- It is the BLE's position that the engineer should remain the highest paid member of the train and engine crew. The BLE is insistent on maintaining that wage differential.

- The issue has arisen as a result of productivity agreements with the UTU under which their members (conductors and brakemen) receive extra pay in exchange for reducing the number of UTU crew members. The Emergency Board recommended that the union may bargain, but not strike, over maintaining their differential for the duration of the contract, or until July 1984.

The Effect of the Pay Differential

- * Through the productivity agreements reached with the UTU, brakemen and conductors -- under some circumstances -- might earn more than the locomotive engineer.
 - The industry-wide average for locomotive engineers is approximately \$37,000, but can run substantially higher in high mileage jobs because of long-standing union work rules.
 - Trainmen (conductors and brakemen) have a lower wage base. But they can earn productivity allowances up to one-third of total pay.
 - Trainmen earnings, including wages and productivity allowances, might therefore -- in some cases -- exceed the compensation paid to the engineer.

The Impact of a National Rail Strike

- * An extended rail strike could have a serious impact on the industry and a "ripple effect" through the economy.
 - Lay-offs of up to 500,000 non-railroad workers after two weeks.
 - As many as 950,000 non-rail workers after four weeks.
 - Halt the flow of \$15 billion worth of goods and commodities shipped per month.
 - Affect approximately 140,000 rail commuters and 18,000 Amtrak riders per day. (Conrail is not directly involved in the strike since it has reached agreements with its unions, but it will be affected because of its extensive interchange traffic.)
- * Some 320,000 non-management rail workers could be idled by any prolonged strike by the 26,000 members of the BLE. A strike would cost the railroad industry an estimated \$8 million per day in unemployment payments alone.

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IMPACT OF RAILROAD STRIKE ON
DEFENSE ESSENTIAL CARGO

- o The struck railroads operate 89 percent of the nation's strategically essential railroad trackage.
- o 85 percent of the nation's defense essential military installations requiring rail service receive service from the struck carriers.
- o 30 percent of military ^{surface} tonnage moves by rail.
- o Cargoes that cannot generally be moved safely or conveniently by other modes include:
 - Battle Tanks and Armor
 - Missile components
 - Aircraft fuselages and wings
 - Large guns
 - Large ammunition
 - Chemicals
 - Fuel
 - Naval hardware
 - Large machinery

September 21, 1982



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

SEP 20 1982

The Honorable George Bush
President of the Senate
Washington, D.C. 20510

IDENTICAL LETTER TO:
The Honorable Thomas P. O'Neill, Jr.
Speaker of the House of Representatives
Washington, D. C. 20515

Dear Mr. President:

Enclosed for introduction and referral to the appropriate Committee is a legislative proposal which would effectuate the Report and Recommendations of the Presidential Emergency Board Numbered 194 (dated August 19, 1982) to resolve the current labor-management dispute in the railroad industry.

The mechanisms of the Railway Labor Act (45 U.S.C. 151, et seq.) for a "cooling-off" period and subsequent report by Presidential Emergency Board have not had the intended effect of leading to a resolution of this labor-management dispute in time to avoid cessation of rail service. A national rail strike has begun and has the potential for affecting the national defense and crippling the strengthening of the economy that has recently begun. Without doubt, it is in the national interest to avoid damaging this nation's economic recovery in such a way.

This Administration is committed to the principle of collective bargaining as the basis for labor-management relations and could support legislative intervention in these matters only under compelling circumstances. At the same time, the unique circumstances in this case clearly require immediate action. With the exception of the BLE, all of the major unions have reached at least tentative agreement with the railroads on new national contracts that will run through June 30, 1984. Only a single issue still separates the BLE and the railroads. It can and should be resolved without the significant losses to employees, the railroads, and the nation as a whole that would be caused by a national rail strike.

The dispute concerns maintenance of pay differentials. The BLE is seeking to ensure that the locomotive engineer is the highest paid member of the train crew in every case. The issue arises when the United Transportation Union, representing the other members of the train crew such as conductors and brakemen, agrees with an individual railroad to reduce the number of UTU members on the crew. The savings resulting from these "crew consist" agreements are shared with the remaining UTU crew members. As a result, the UTU agreements may cause the earnings of the conductor or brakemen on reduced-crew assignments to exceed the compensation received by the engineer.

BLE insists that the locomotive engineers should have the right to seek higher pay whenever a railroad and the UTU reach a crew-consist agreement. The Emergency Board agreed that the BLE should have the right to bargain on this issue, using peaceful means, during the life of the proposed new agreement, or until July 1984.

-2-

Having given full consideration to the potential impact of the current strike on the nation's economy and national defense, having allowed the parties to exhaust the statutory period for collective bargaining and to resort to self help, and in view of the isolated nature of the single outstanding issue, it is the President's judgment and recommendation that the single narrow issue be resolved in accordance with the independent judgement of the Emergency Board, for a period consistent with the other national agreements negotiated in the rail industry.

There is ample precedent for Congress to build on the "status quo" provisions of the Railway Labor Act, as in the 1970 effectuation of an agreement by law that had been developed between the carriers and employee representatives (P.L. 91-226, April 9, 1970). The enclosed proposal takes a similar approach.

The Administration's request for action was of necessity delayed as long as possible to permit the proper functioning of the collective bargaining process. Now that the parties have resorted to self help, I would ask that the Congress and its Committees act as expeditiously as possible.

Sincerely,



Enclosure

JOINT RESOLUTION

To provide for resolution of the single outstanding issue in the current railway labor-management dispute, and for other purposes.

WHEREAS the labor dispute between the carriers represented by the National Carriers' Conference Committee of the National Railway Labor Conference and certain of their employees represented by the Brotherhood of Locomotive Engineers threatens essential transportation services of the Nation; and

WHEREAS it is essential to the national interest, including the national health and defense, that essential transportation services be maintained; and

WHEREAS all the procedures for resolving such dispute provided for in the Railway Labor Act have been exhausted and the parties have resorted to self help; and

WHEREAS the Congress finds that emergency measures are essential to security and continuity of transportation services by such carriers; and

WHEREAS all of the other negotiations for a national agreement by the rail carriers and the representatives of other railroad employees have been successfully completed, including the negotiations of the carriers and the United Transportation Union that were resolved through the Report and Recommendations of Presidential Emergency Board Numbered 195, and

WHEREAS the recommendations of Presidential Emergency Board Numbered 194 for settlement of this dispute have led to agreement of the parties on all but a single issue, and the recommendation on that issue would preserve the employees' collective bargaining rights within the peaceful procedures of the Railway Labor Act: Now, therefore, in order to preserve the national interest in essential transportation services, be it

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, That:

Consistent with the purposes of the Railway Labor Act to avoid any labor dispute that threatens substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service,

(1) The parties to the above dispute shall take all necessary steps to restore service, and the status quo of the parties shall return to that which was in effect prior to 12:01 antemeridian of September 19, 1982, which status shall remain in effect through June 30, 1984, subject to the other provisions of this Joint Resolution; and

(2) The Report and Recommendations of the Presidential Emergency Board Numbered 194, dated August 19, 1982 (including the recommendations regarding Moratorium issues), shall be binding on the parties and shall

have the same effect as though arrived at by agreement of the parties under the Railway Labor Act (45 U.S.C. 151, et seq.), and shall be effective for the period from April 1, 1981, through June 30, 1984: Provided, that nothing in this Joint Resolution shall prevent any mutual agreement by the parties to implement the terms and conditions established by this Joint Resolution.

Sec. 2. This resolution shall take effect immediately upon enactment.

SECTION-BY-SECTION ANALYSIS

Findings. The Joint Resolution is prefaced by six findings. The findings give appropriate weight and consideration to the issues in question -- in particular the national interest in maintaining nationwide railroad service and the desirability of resolving the single outstanding issue consistent with the balance of independent Board recommendations that were agreed to by all involved parties.

Section 1. This section retorees freight service by returning the status of the parties to that which existed prior to September 19, 1982, and effectuates the recommendations of the Presidential Emergency Board Numbered 194 (dated August 19, 1982), to resolve the issue outstanding between the parties to the current labor-management dispute under the Railway Labor Act (45 U.S.C. 151, et seq.).

The provisions of section 10 of the Railway Labor Act (45 U.S.C. 160) are intended to provide labor and management with a further opportunity to achieve a collective bargaining agreement in circumstances where an impasse has already been reached but the national interest justifies continuation of national rail service rather than immediate cessation. An Emergency Board is constituted to make recommendations that are intended to encourage agreement strongly.

The Emergency Board recommendations in this case have not precipitated agreement, and a nationwide rail strike by the Brotherhood of Locomotive Engineers (BLE) began September 19. This strike threatens the nation's

-4-

economy and defense capabilities. All of the issues in dispute but one have been resolved consistent with the Board's recommendations, and all unions but the BLE have reached agreement with the rail carriers. This section has the effect of implementing the one remaining recommendation of the Board, consistent with the balance of its recommendations and parallel agreements reached with other employees.

Section 1 is made effective for the traditional contractual period contemplated by the parties and adopted in the other agreements between the carriers and their employees. Provision is made for the parties to clarify the Board recommendations as necessary to implement them.

Section 2. This section makes the Joint Resolution effective immediately upon enactment. The immediate effective date is justified because the parties have already resorted to self help. All affected parties can be notified immediately of the extension and act accordingly without undue disruption.

The CHAIRMAN. We will recess.

[Whereupon, at 7:38 p.m., the committee recessed, to reconvene at the call of the Chair.]

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